(17,605.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 182.

CHARLES A. CHAPIN, PLAINTIFF IN ERROR,

vs.

RUTH I. FYE, BY HER NEXT FRIEND, HENRY W. FYE.

IN ERROR TO THE CIRCUIT COURT OF KALAMAZOO COUNTY, STATE OF MICHIGAN.

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6 Supreme Court, Michigan, Mar. 29, 1899.

STATE OF MICHIGAN:

Supreme Court.

RUTH I. FYE, by Her Next Friend, HENRY W. FYE, Plaintiff and Appellee,
vs.
CHARLES A. CHAPIN, Defendant and Appellant.

Record

In supreme court of said cause on its removal by writ of error from the circuit court for the county of Kalamazoo.

N. H. Stewart, of Kalamazoo, Mich.; Edward Bacon, of Niles, Mich., att'ys for defendant and appellant.

Gore & Harvey, of Benton Harbor, Mich., att'ys for plaintiff and appellee.

1 STATE OF MICHIGAN:

In the Circuit Court for the County of Berrien.

In the name of the People of the State of Michigan, to Charles A. Chapin:

You are hereby notified that a suit has been commenced against you in the circuit court for the county of Berrien by Ruth I. Fye, who prosecutes by Henry W. Fye, who is appointed to prosecute for the said Ruth I. Fye, who is an infant within the age of twenty-one years, as the next friend of the said Ruth I. Fye, in a plea of trespass on the case, as plaintiff; and that if you desire to defend the same you are required to have your appearance filed or entered in the cause, in accordance with the rules and practice of the court, in person or by attorney, within fifteen days after service of this summons upon you. Hereof fail not, under penalty of having judgment taken against you by default. The plaintiff claims damages in said suit, not exceeding twenty-five thousand ($25,000) dollars. Service of this summons shall be made on or before the 31st day of January, A. D. 1898, which is the return day hereof.

2 Witness Hon. Orville W. Coolidge, circuit judge, and the seal of said court, at the city of St. Joseph, the place of holding said court, this 20th day of January, A. D. 1898.

LELAND D. TOWNSEND,
[COPY SEAL.] *Deputy Clerk.*

GORE & HARVEY,
Attorneys for Plaintiff.

Business address: 117 Pipestone street, Benton Harbor, Michigan.

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STATE OF MICHIGAN, } ss:
County of Berrien, }

I hereby certify and return that on this 21st day of January, A. D. 1898, at the city of Niles, I served the within summons upon Charles A. Chapin, defendant, named in said summons, by then and there showing to him, said above-named defendant, the within summons, with the seal of the court impressed thereon, and delivering to him, said defendant, a true copy of said summons.

B. F. EARL,
Under Sheriff of said County.

My fees, $3.35.
Dated January 21st, 1898.

Returned and filed this 26th day of Jan., A. D. 1898.
JOHN W. NEEDHAM, *Clerk.*

3 STATE OF MICHIGAN:

In the Circuit Court for the County of Berrien.

To Honorable Orville W. Coolidge, circuit judge:

Your petitioner, Henry W. Fye, respectfully represents, that he is a resident of Niles, in said county, and is the father and natural guardian of Ruth I. Fye, an infant of the age of four years. Your petitioner further represents, that on December 16th, 1897, in the home of petitioner, at the city of Niles, aforesaid, his said infant daughter, Ruth I. Fye, was assaulted and bitten, and greatly injured, by a large dog, owned and kept by one Charles A. Chapin, in said city of Niles; that said assault was made upon said infant child without any provocation whatever; and without the enclosure of said Chapin, the owner of said dog. Wherefore, under the laws of Michigan, an action has accrued to said Ruth I. Fye against said Charles A. Chapin, to recover for said wrongs and injuries, and your petitioner prays that he, Henry W. Fye, may be appointed the next friend of said Ruth I. Fye, for her and in her behalf, to bring an action in the circuit court for the county of Berrien, to recover damages for said wrongs and injuries.

HENRY W. FYE.

Dated Jan. 14th, 1898.

STATE OF MICHIGAN:

In the Circuit Court for the County of Berrien.

Upon reading and filing the foregoing petition it is ordered that said petitioner, Henry W. Fye, be, and said Henry W. Fye
4 hereby is appointed the "next friend" to prosecute for and in behalf of said infant, Ruth I. Fye, an action at law in this court as prayed for in said petition.

ORVILLE W. COOLIDGE,
Circuit Judge.

Dated January 15th, 1898.
Filed January 20th, 1898.

JOHN W. NEEDHAM,
L. D. T., Clerk.

STATE OF MICHIGAN, } ss:
County of Berrien, }

Henry W. Fye, being duly sworn on oath states that he has read the foregoing petition, and knows the contents thereof, and states upon his own knowledge that the statements therein contained are true.

HENRY W. FYE.

Subscribed and sworn to before me this 14th day of January, 1898.

FRANK P. GRAVES,
Notary Public, Berrien County, Mich.

5 STATE OF MICHIGAN:

In the Circuit Court for the County of Berrien.

RUTH I. FYE, by HENRY W. FYE, Her Next Friend, Plaintiff, }
vs.
CHARLES A. CHAPIN, Defendant. }

To John W. Needham:

Please enter the appearance of the defendant in the above-entitled cause, by Edward Bacon as his attorney.

EDWARD BACON,
Defendant's Attorney.

Dated Feb. 2, 1898.

Filed February 3*th*, 1898.

JOHN W. NEEDHAM.

STATE OF MICHIGAN:

In the Circuit Court for the County of Berrien.

RUTH I. FYE, by HENRY W. FYE, Her Next Friend, Plaintiff, }
vs.
CHARLES A. CHAPIN, Defendant. }

6 Ruth I. Fye, an infant under the age of twenty-one years, who prosecutes by her next friend, Henry W. Fye, by Gore & Harvey, her attorneys, complains of Charles A. Chapin, defendant in this suit, who has been summoned to answer the said plaintiff in a plea of trespass on the case.

I.

For that, wher-as, the said defendant heretofore, to wit, on Dec. 16th, 1897, and for a long space of time prior thereto, and at the time of the damage and injury of said plaintiff, hereinafter mentioned, to wit, at the city of Niles in said county of Berrien, wrongfully and injuriously was the owner and keeper of a certain dog; and which said dog on said 16th day of December, 1897, and whilst the said defendant was the owner and keeper thereof as aforesaid,

at said city of Niles at the home of said plaintiff in said city, without fault or negligence on the part of the said plaintiff contributing thereto, and without provocation, and while said plaintiff, a child of four years of age was playing with her toys in her father's house in said city, and out of the enclosure of said defendant, did assault, bite, lacerate, and otherwise injure the plaintiff, and did then and there with great force and violence, jump and trample upon the plaintiff, and with his teeth and claws, did then and there lacerate and wound the face and head of said plaintiff, cutting deep gashes in the face of plaintiff, and a deep gash in plaintiff's scalp; and thereby plaintiff was greatly bruised, cut, torn, and otherwise injured, and plaintiff's whole nervous system was permanently injured by the shock and fright of said assault. And thereby the plaintiff was otherwise greatly and permanently wounded and injured and disfigured for life. And by means whereof plaintiff became and was sick, sore, lame, and disordered and suffered great bodily
7 pain and mental anguish and torture, and still continues to suffer great pain, and the character of said injuries are such that plaintiff will continue to suffer great pain and inconvenience, and plaintiff was thereby disfigured for life.

And plaintiff avers that on December 16th, 1897, and prior thereto, during her whole life, she has been a sound and healthy person, and by reason of said assault, she has become greatly damaged by the disfigurement of her person, and by means of the premises, the plaintiff says she is injured contrary to the form of the statute of this State in such case made and provided, to wit: chapter sixty-one, section two thousand one hundred and nineteen, of volume one, of Howell's Annotated Statutes of Michigan, whereby and by force of the said statutes, an action hath accrued to the plaintiff to have and demand of the defendant her damages occasioned by the injury aforesaid, and to have the same doubled by virtue of the said statute, to the damage of said plaintiff twenty-five thousand dollars.

II.

For that, whereas, the said defendant, Charles A. Chapin, heretofore, to wit: on the first day of June, 1897, and from thence for a long space of time, to wit: until and after the time of the damage and injury of plaintiff hereinafter mentioned, at the city of Niles in said county, wrongfully was, and during all said time had been, the owner and keeper of a certain dog; which said dog was a large, powerful and vicious animal, and during all said time was in the habit of biting, jumping upon and assaulting persons on the streets and public ways and walks of said city of Niles; and during said time had assaulted and bitten and greatly injured certain children on said public streets, ways, and places, and all such mis-
8 chievous conduct and said vicious habits were well and fully known to Charles A. Chapin the defendant; yet the said defendant continued to own, keep and harbor said vicious animal, and on December 16th, 1897, at said city of Niles, at the home of Henry W. Fye, father of plaintiff, where plaintiff then rightfully

was, said dog, against the protest of plaintiff and said Henry W. Fye, came into the said home which was and is without the enclosure of defendant, and then and there, without any provocation whatever, and without any negligence whatever on plaintiff's part contributing in any manner thereto, said dog did with great ferocity assault, bite, wound and greatly injure the plaintiff, thereby inflicting severe and dangerous wounds and gashes in the plaintiff's face which will disfigure plaintiff for life, and thereby tearing from plaintiff's head a large portion of her scalp, causing the loss of a large quantity of plaintiff's blood and disfiguring plaintiff's head and face for life. And plaintiff avers that said injuries were received and said assault was made while plaintiff was out of the enclosure of defendant, who was on said 16th day of December, 1897, and all the times mentioned herein, the owner and keeper of said dog, and by reason of said assault and the injuries inflicted on plaintiff's person, and by reason of the said great loss of blood and the shock and fright occasioned by said assault and injuries, the plaintiff theretofore a sound and healthy person became and was and now is sick, sore, lacerated, lame and permanently disfigured and injured, and her whole nervous system permanently injured and her mental faculties ruined and her health permanently injured, and her blood poisoned and contaminated, whereby the plaintiff is greatly damaged, and by reason of the premises an action hath accrued to the plaintiff under and by virtue of the statute of the State of
9 Michigan in such cases made and provided, the same being chapter sixty-one, and particularly section two thousand one hundred and nineteen of vol. 1 of Howell's Annotated Statutes of Michigan, to demand, have and recover of the defendant her damages occasioned as aforesaid, and to have the same doubled by virtue of said statute, to the damage of the said plaintiff in the sum of twenty-five thousand dollars; and therefore she brings suit, etc.

GORE & HARVEY,
Attorneys for Plaintiff.

Filed February 4th, 1898.

JOHN W. NEEDHAM, *Clerk.*

STATE OF MICHIGAN:

In the Circuit Court for the County of Berrien.

RUTH I. FYE, an Infant under the Age of Twenty-one Years, by Henry W. Fye, Her Next Friend, Plaintiff,
vs.
CHARLES A. Chapin, Defendant.

10 Now comes the said defendant, Charles A. Chapin, by Edward Bacon, his attorney, and demands a trial of the matters set forth in the plaintiff's declaration.

EDWARD BACON,
Attorney for Defendant.

Filed February 11th, 1898.

JOHN W. NEEDHAM.

STATE OF MICHIGAN:

In the Circuit Court for the County of Berrien.

RUTH I. FYE, an Infant under the Age of Twenty-one Years, by Henry W. Fye, Her Next Friend, Plaintiff,
vs.
CHARLES A. CHAPIN, Defendant.

Now comes said defendant, Charles A. Chapin, by Edward Bacon, his attorney, and moves the court now here, that by proper order, the said plaintiff may be required to give good and sufficient security for the payment of all costs that shall in this cause be awarded against said plaintiff. The specific reasons for this motion are as follows:

1st. Neither said Ruth I. Fye nor Henry W. Fye have any property liable to execution, and neither of them has, during one year last past, had any property liable to execution.

11 2d. Said Henry W. Fye, being the plaintiff's father and next friend, is the owner and occupant of the northeast quarter of lot six (6) in Green & Hoffman's addition to the village (now city) of Niles, which is worth about seven hundred dollars, but being his homestead, is exempt from sale on execution, and is nevertheless such property that by means thereof, he could furnish necessary security for costs in this suit, under the order of the court.

And in support of this motion defendant refers to his affidavit herewith filed.

EDWARD BACON,
Defendant's Attorney.

STATE OF MICHIGAN:

In the Circuit Court for the County of Berrien.

RUTH I. FYE, an Infant under the Age of Twenty-one Years, by Henry W. Fye, Her Next Friend, Plaintiff,
vs.
CHARLES A. CHAPIN, Defendant.

COUNTY OF BERRIEN, *ss:*

Charles A. Chapin, of the city of Niles, in said county, being duly sworn, says that he is the defendant in the above-entitled cause, and that he has for some time known Henry W. Fye, above named, and has had personal knowledge of his financial circumstances.

12 Further, that said Henry W. Fye is without property liable to execution, and has for more than one year last past been without property liable to execution. That said Henry W. Fye is the possessor, and as this deponent is informed and believes, is the owner of his homestead where he resides in said city, to wit: the northeast quarter of lot six (6) in Green & Hoffman's addition to the village (now city) of Niles.

That the value of said premises is now and for more than one year last past has been about the sum of seven hundred dollars.

Further, that the plaintiff, Ruth I. Fye, is the young child of said Henry W. Fye, and is without any property liable to execution, and has ever been. That she resides with her father, said Henry W. Fye, in said homestead on said premises, and has resided there all her life.

CHARLES A. CHAPIN.

Subscribed and sworn to before me this 10th day of February, A. D. 1898.

WM. R. WILLIS,
Notary Public, Berrien Co.

STATE OF MICHIGAN, } ss:
County of Berrien, }

I, John W. Needham, clerk of the county of Berrien, and clerk of the circuit court of said county, the same being a court of record and having a seal, do hereby certify that the annexed are the original and all of the original files in the case of Ruth I. Fye, by Henry W. Fye, her next friend.

13 In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court, at St. Joseph, this 11th day of March, A. D. 1898.

[COPY SEAL.] JOHN W. NEEDHAM, *Clerk.*

Filed Feb. 11th, 1898.

JOHN W. NEEDHAM.

These papers were filed by the clerk of Kalamazoo county in his office as follows, to wit:

Filed March 19th, 1898.

WM. A. FORBES,
County Clerk.

STATE OF MICHIGAN:

In the Circuit Court for the County of Kalamazoo.

RUTH I. FYE, by HENRY W. FYE, Her Next Friend, Plaintiff, }
vs.
CHARLES A. CHAPIN, Defendant. }

Whereas, the Honorable Orville W. Coolidge, circuit judge of said court, the same being the second judicial circuit of the State of Michigan, is, by reason of affinity to the above-named defendant, Charles A. Chapin, disqualified to try and hear said cause: Now, therefore, it is stipulated by and between Gore & Harvey, attorneys for plaintiff, and Edward Bacon, attorney for defendant, that said cause be transferred from the second judicial circuit, where
14 the same is now pending, to the ninth judicial circuit in said State of Michigan. And it is further stipulated, that an order be duly signed and filed by the circuit judge in and for the county of Kalamazoo, in said ninth judicial circuit, transferring

said suit to said county of Kalamazoo, and when said cause is so transferred, the said circuit court for said county shall have jurisdiction of the said cause to the same extent as if said cause had been legally commenced in said circuit court for the county of Kalamazoo.

GORE & HARVEY,
Attorneys for Plaintiff.
EDWARD BACON,
Attorney for Defendant.

Dated March 11th, 1898.

STATE OF MICHIGAN:

In the Circuit Court for the County of Kalamazoo.

RUTH I. FYE, by HENRY W. FYE, Her Next Friend, Plaintiff,
vs.
CHARLES A. CHAPIN, Defendant.

Upon reading and filing the foregoing stipulation it is ordered that said cause be, and the same is hereby, transferred from the circuit court for the county of Berrien, Michigan, where the
15 same is now pending, to the circuit court for the county of Kalamazoo, in said State.

GEO. M. BUCK,
Circuit Judge.

March 16th, 1898.

Filed March 16th, 1898.

WM. A. FORBES,
County Clerk.

16 STATE OF MICHIGAN:

The Circuit Court for the County of Kalamazoo.

RUTH I. FYE, by Her Next Friend, HENRY W. FYE, Plaintiff and Appellee,
vs.
CHARLES A. CHAPIN, Defendant and Appellant.

Bill of Exceptions.

At a session of said court, held at the court-house in the city of Kalamazoo, in said county on the 25th day of May, A. D. 1898, before Hon. George M. Buck, circuit judge, the issue joined between the parties in this cause come on to be tried by a jury of said county, for that purpose duly impaneled and sworn, good and law-
17 ful men of said county, at which time also come as well said plaintiff as the said defendant, by their respective attorneys, at which time the trial proceeded as follows: A jury having been impaneled and sworn in the above-entitled cause, the trial proceeded as follows: Gore & Harvey of Benton Harbor, and Frank E. Knappen of Kalamazoo, appeared for said plaintiff, and Edward

Bacon of the city of Niles, and N. H. Stewart of the city of Kalamazoo appeared for defendant.

The opening statement to the jury on the part of the plaintiff was made by Mr. V. H. Gore, and then, to maintain and prove the issue joined, the following proceedings were had and following-named witnesses were produced. The first witness produced by the plaintiff was the mother of the plaintiff, Ruth I. Fye, Mrs. HANNAH FYE, who was examined in chief by said V. H. Gore.

Direct examination of HANNAH FYE by Mr. GORE:

My name is Hannah Fye. I reside in Niles. I am a married lady and my husband's name is Henry Fye. I have a family of one child, this daughter. Her name is Ruth Isabelle. I have been married to Mr. Fye 11 years the 30th of May. This child will be five years old the 27th of August next.

I am acquainted with the defendant, Charles A. Chapin and his family. I am acquainted with Effie Stevenson and Alice Harcourt who formerly worked for Mr. Chapin. I am acquainted with the dog that has been mentioned in this case. I know what kind of a dog he is. His name is "Duke," and I have known him in Niles, I should think, for about seven years, six or seven. I think he is a St. Bernard. As to his size, I would think that he was about the largest dog in Niles, the largest that I have ever seen.

18 I was employed during the first part of the month of last December at Mr. Chapin's house. At that time my husband was injured; his arm was broken in three places above the elbow and below the elbow, and dislocated in the elbow—broken in two places, and dislocated in the elbow. On December 16, 1897, he had not fully recovered from such injury; his arm was still in the sling.

On the 16th day of December last I was working at Mr. Chapin's residence. Mr. Chapin's residence from my husband's is about seven blocks, half a mile I should think. He lives near the central portion of the city of Niles. His house faces on Fourth and Sycamore streets and Fifth avenue. Fourth street is said to be the main street in Niles. There is a "Main street" there by his house. Mr. Chapin's residence from the corner of Main street is the second house. One side of that block is Main street. There is a hotel on Fourth and Main street-, the Pike house. That is one of the leading hotels of Niles. My house from Mr. Chapin's is located southeast, near the branch of the Michigan Central that runs from South Bend to Niles. Our house is near the tracks of that road. Our house faces on Oak lane.

On the 16th day of December, I had been working at Mr. Chapin's, this defendant. I had been doing the sweeping and dusting. I had not been assisted in that work by any one. Others had been working there at the same time about the house, Alice Harcourt and Effie Stevenson. I do not know that anybody else was employed there. Mr. Chapin has a family. The day that I worked

there, on the 16th day of December, the young ladies were
19 home, but Mr. and Mrs. Chapin I think were in Chicago. About half past five I left the Chapin residence for my home. I got to my home about six. Mrs. Hattie McMichael and her husband and two children constituted my family or lived in my house at that time, and our family. No one but Mrs. McMichael and her two little children were home on the evening of December 16th, until late in the evening when her husband came in about nine o'clock, after the assault. I was expecting the two girls from the Chapin residence that evening at my house. They said they would be there about seven. I was at home at that time, but they did not come until pretty near eight I should think. I had given them up when the rap came to the door. I had given up looking for them. They came about eight o'clock, I should think; Alice and Effie, and when I went to the door to open it the first one in was the dog, which I was surprised to see, and then the two young ladies; three came besides the dog; Alice Harcourt and Effie Stevenson. I should think Alice was about 26 and I would think Effie was about 21. Alice Harcourt and Effie Stevenson were seated in the sitting-room with my husband and I, Ruth, the little girl, was in the sitting-room with us, and as the dog would come towards her she would shy back of our chairs to get—hide from him; she was afraid of him. She had never seen such a large dog.

Mr. STEWART: Wait a minute. I move to strike it out as conclusion.

Mr. GORE: I don't care anything about it.

The COURT: I think it may stand.

The dog was moving about the room, in the sitting-room where we all were. The child seemed to be afraid of him, and she
20 went out in the dining-room and sat on the floor and commenced to play with her dolls; as the dog passed from the sitting-room I noticed him, I thought I would go out after him, I thought maybe she would be afraid, and so the dog laid down as I supposed, just inside of the dining-room door; of course I could see my child all the time, she sat right opposite me, as I sat in the *the* sitting-room, she sat opposite me in the dining-room. It wasn't more than a minute until I heard the dog bark and bounced at her, and I heard her scream. So we all jumped and rushed for the child; as I looked, before I raised in my chair I saw the dog over her; her father was the first one to her. He kicked the dog off from her and I grabbed the child and ran in the sitting-room with her. Her condition just at the time I picked her up was sitting; I grabbed her up so quick I didn't really notice. Our house faces the north, and the dining-room in which the child sat was east of the sitting-room in which I sat. There was a single door between. The child was sitting against the north wall of the dining-room, facing south. She wasn't near enough to the north wall for her back to be against it; not quite, I don't think.

As I picked her up, after the dog had bitten her, the blood was spurting from her head like a stream out of a fountain, and I ran

with her into the sitting-room. As I carried her there was a stream of blood along the carpet, and a pool on the oilcloth where I stood to look at her; then I went forward to the lamp and sat down on a chair to see where she was hurt, and I couldn't hardly see her face for the blood, I could not tell where the injury was for a minute, only I saw the most of the blood pouring from the head and side of the face. Of course she was bitten in the face, below the eye, and back here and in the head. I held her in my arms and
21 the blood was spouting from her head. She was bitten here (indicating) in the face three times.

Q. I want the jury to see where she was bitten.

A. This cut here below the eye. Right about here, and right in there just as close to the eye as it could get possibly, and kind of on the upper eyelid and back in here,—this cut from here to here I mean. The scalp there was all torn loose. The wound was torn and lay back. This piece lay back. After I picked the child up I should think it was five minutes or so before I could tell just where she was injured. One tooth struck here, right in her eye. The child never had that black knot, that black knot on her eyelid before December 16th, 1897. Her eye has been affected by it ever since. That has remained on the eye. There were two other wounds on her face just under. I point out on the child's face and locate with my finger the number of wounds and their location. Two wounds here and one just in there (indicating). Just back of her ear the skin was torn off. (At this point the witness showed the child's wounds to the jury.) There were three marks on the cheek and one back of the ear.

Q. Now, you may state what was done immediately after the injury. You may state what was done and what was said by the parties present.

Mr. STEWART: I object to what was said, if your honor please, as hearsay.

Mr. GORE: Part of the *res gestæ*, your honor.

The COURT: That would depend upon when it was said. If it was said at the instant it might be a part of the *res gestæ*.

Mr. GORE: The question is "immediately after the injury."

The COURT: Yes.

22 Mr. STEWART: If your honor please, at this point, may we have it understood the same as in all cases, that an exception may follow the ruling without especially mentioning it?

The COURT: Yes, she may answer the question. We will try and take care of the answer.

Q. You have said that you picked up the child after she was bitten, Mrs. Fye. Now state at that moment what was said and what was done by the parties present?

A. Well, I walked the floor with her, the blood spurting from her head and saturating her clothes clear to the bottom of her little dress with the blood, and the dress which I had on was blood-stained to the bottom almost, and the arm that I held her in was

soaked through to my undergarment with the blood; and I screamed, the girls cried and screamed.

Q. What girls cried and screamed?

A. Alice and Effie cried and screamed.

Q. Did they say anything at that time?

A. They were just as scared as I was.

Q. Tell what they said, if anything.

A. When Mr. Fye spoke to them he wanted to kill the dog, and he kicked the dog and he turned on him, and I told the girls. I knew his arm was in a sling; he could not do anything to save himself from the dog, and I screamed for the girls to open the door and let the dog out, which they did, and of course he was very much flustrated from the way the child looked, and he wanted to kill the dog; he went around to two or three places to find—to get a revolver, and he didn't happen to go to any place where they had one; so he said, "I will get the axe and kill him." And the girls said, "Oh, never mind, let the dog go. Mr. Chapin is a rich man; sue him and make him pay for this."

23 Q. Who said that?

A. Alice.

Mr. STEWART: Now just wait a minute. Was this after the husband had gone around the neighborhood and could not get a revolver or before?

The WITNESS: It was before.

Q. It was before he left?

A. Yes, sir.

Q. Go on and state anything else that was said right at the time, if you remember anything. Where was Mrs. McMichael?

A. Well, the girls said—I said "Oh can't somebody do something for my child, she is bleeding to death"—and the girls were scared; they tried to do, but they didn't know the haunts of the house. I said "Get some hot water and wring out cloths and put on her head." They didn't know where to get anything. So Mrs. McMichael was already retired, and I pushed her door in and called to her, she came out in her night clothes and went and got—went immediately to heating water and wringing cloths and putting them on the child's head. Then I sent my husband for the doctor; I told him to go and bring a doctor as quick as he could.

Q. Did he do that?

A. Yes, sir.

Q. While he was gone what was done?

A. Mrs. McMichael kept heating cloths and putting them on her head, applying warm cloths and the child was screaming frantically; every little while she would kind of swoon away and get sick to her stomach and vomit and also pass off from her kidneys and wet her clothes clear through and through; she vomited three times before the doctor got there. Mrs. McMichael kept heating cloths and putting them on her head to stop the flow of the blood.

The COURT: Before going further, I think the conversation
24 about killing the dog and suing Mr. Chapin, I think should be stricken out; it seems to me that it hardly could be called

a part of the *res gestæ*, as it does not refer at all to the injury itself; so that should be stricken out and disregarded by the jury.

Mr. GORE: We take an exception.

Q. I will ask you then, if any exclamation or statements apart from what you have related were made at the time of the injury regarding the injury itself, about its character or anything of that kind.

A. Oh, they all thought it was something terrible.

Q. No, don't tell what they said, if they said anything at that time, the court I think will allow you to state it.

The COURT: If it was said right at the time immediately following, within a minute or two after the injury, if there was any exclamations or anything about the injury itself, I think that would be admissible.

The WITNESS: Oh, Mrs.—Effie could not look at it at all, Alice thought it was dreadful—Mrs. McMichael——

Q. What did they say if anything, Mrs. Fye?

A. They said, "Oh, it was terrible; it was something terrible." And they screamed and cried about it as hard as I did.

Q. They screamed and cried about as hard as you did?

A. Yes, sir.

Q. And said it was terrible?

A. Yes, sir. And Mrs. McMichael when she seen it she said, Oh, my, that is terrible, terrible. And when the doctor came he asked her what she was doing; she said she was heating cloths and applying them to the head. He said "That is right, keep right on." He says, "I have got to go back to the office and get my nurse and get my instruments to sew that up." He says, "I will have to take twelve or fourteen stitches." He said, "I didn't think it was so bad."

Q. What doctor was that?

A. Dr. Baldwin we sent for; we went to Doctor Baldwin's house; that is the third house above us where we lived.

Q. Is that the nearest doctor?

A. Yes, sir, the nearest doctor. We went to the house to telephone for Doctor Smith, our family physician; then Doctor Baldwin was sent instead—he came instead. He staid at the same hospital with Doctor Smith.

Q. You say he came first and went back.

A. He looked at the child; he said, "Well, if I knew it was so bad I could have brought my nurse and my instruments." So he went back, and came back in about seven minutes, I should judge, with his nurse and instruments.

Q. Then what did he do?

A. He shaved the hair all off of that side of her head and chloroformed her. He couldn't get her away from me hardly; she would not let him touch her nor would not let the nurse do anything. She was screaming all the time; then when he got—took her away from me by main force, he laid her on the bed and chloroformed her, and the nurse got the towels ready and laid her head on the

towels and got everything ready, and the doctor proceeded to sew up the wound.

Q. He did sew up the wound, did he?

A. Yes, sir.

Q. Did he dress those wounds on her face?

A. I don't really know as to that.

Q. Well——

A. (Interrupting.) I could not look at her; I got one glance at her, the side of her face and her head after he had the hair
26 all shaved off, and it almost made me faint, so I could not take the second look.

Q. Who was it that assisted the doctor?

A. Mr. Henry Burge, for one, held the lamp close to her head while he sewed the wound, and his nurse for the other.

Q. Is the nurse a lady?

A. Yes, sir.

Q. A lady nurse? Do you know how many stitches were taken?

A. No, but the doctor said he thought fourteen.

Q. Did you take any photograph of that wound at the time?

A. Yes, sir, there was one.

Q. (Showing witness photograph.) I will ask you if that is the photograph of the wound showing the stitching?

A. Yes, sir.

Q. What do these marks indicate on the face, under the eye and on the face?

A. Where the tushes went into her cheek and face.

Photograph marked Exhibit A.

Q. Do you know how long after the injury it was before this was taken?

A. I think it was about the seventh day.

Q. After the injury?

A. After the injury.

Mr. GORE: We offer it in evidence.

Mr. STEWART:

Q. This date on the back, whose handwriting is that in, do you know?

A. My husband's I think.

Mr. STEWART:

Q. What do you say as to whether or not that is the date at which the photograph was taken?

A. I think it was the date.

Mr. STEWART: You say seven days after the wound?

A. Yes, sir.

Mr. STEWART:

Q. Did you see him put it there?

27 A. Yes, I think I did He said he would write the date on so he would not forget it. It is his handwriting.

Mr. STEWART:

Q. Who took the photograph?
A. Fred Durham.

Mr. STEWART: We object to it as irrelevant and immaterial.
The COURT: I think under her statement it was taken the seventh day after the injury, it may be admitted.
The photograph was here shown to the jury, who examined it.

The child was confined to her bed about four weeks, I should think. During that time she was very nervous, it was almost impossible to do anything with her—kind of hysterical like, it was something terrible to take care of her. I should think the physicians called upon her about five times. The last portion of the wound to heal was this point right here (indicating on photograph), and a large scab came out, and it left a hole, and the second scab seemed to fill it up; it was about three months before she was so that I could comb or brush her hair. It is at the apex. This extreme point was the last to heal. She had beautiful long hair down to her waist, and that hair was clotted and matted together with blood, which you see—I could not comb that even enough to have it cut off—well, I should think for six weeks. She was in bed about four weeks anyway, of course I called that in bed, she was not able to be dressed—in the bed and cab—she was in her "nighty" all that time, laying in her cab, bolstered up on pillows all of the time. I gave her my time, all the time; I could not leave her side hardly a minute, not long enough to do my washings or to do my work; of course I wasn't able to hire anybody, and so I had to do it myself.

28 Q. What was the condition of this child's health before this injury?

A. She always seemed perfectly healthy. This injury was such a shock to her nerves that she has never been the same since.

Mr. STEWART: I move to strike that out.
The COURT: I think it may remain.

Q. You may point out in what particular she has been different in her conduct, and in her appearance.

A. Restless of nights, wakeful, tremerous, wake up screaming and trembling and thinking the dog was after her.

Q. Would she make any expressions of that kind?

A. Yes, sir. She and I sleep together; she would wake up screaming and trembling, clinging tight to me, and think the dog was after her, wanting me to make the dog go away, and I could hardly convince her for a long time—I would raise her up in the bed and talk to her. I always burned a light after she was bitten, which I never did before. I would raise her up in bed and show her there was no dog around the room at all. After a long time I could get her quieted down; she would not rouse maybe in half an hour; she done that the whole night.

Whereupon court took a recess until 2 o'clock p. m.

WEDNESDAY P. M., *May 25th*, 1898.

Mrs. HANNAH FYE, being recalled for further examination by Mr. Gore, testified as follows:

Q. Mrs. Fye, you told us generally of the condition of the child during the first four weeks of its illness. At the end of that time what was the condition of the child—the nervous condition of the child at the time she was able to get up?

29 A. Well, nervous, tremulous, irritable, wakeful at night, and restless generally night and day; tired, always complaining of being tired. Complaining of being tired, she would come in lots of times and would sit down on her little chair and say, "Mama, I am all tired out." She seemed to have no strength; and after the first four weeks she seemed to almost have to learn to walk again; she would stumble and seemed to have no strength in her arms or limbs after she began to get around the house. During this period of illness, she complained generally of her head hurting her greatly; she would complain frequently of her head hurting—her head aching; of course she could not lay on that side of her head that was bitten, for as much as three months, without hurting her. She continued to complain of her head up to the time that she had her spasms, and she has complained since, up to the time she had the spasms. The first spasm she had was the 14th of April. The day that she had the first spasm, all that night before, she was very restless; she didn't seem to sleep a half an hour all the whole night; that is, to sleep a comfortable sleep. That would be the night of the 13th of April. She was up and around the house at that time. She was eating her meals, but her appetite wasn't the very best. The condition of her bowels was regular as usual, and they are usually regular. It was in the forenoon just about 11 o'clock, April 14, that she had this spasm. That morning she had been playing with her dolls and her doll cab, but I noticed she was very nervous and her face seemed so flushed. She seemed so nervous and irritable. She came in and lay—got up on the lounge and lay down on her knees and hands, throwed her head forward on the lounge and told me how her head hurt her. I noticed that she had fever, she seemed—her hands seemed so hot, and her

30 little head seemed so hot. Well, I was busy to work. I asked her father to rock her to sleep, and he did, which he did, and he laid down with her and when he came out I asked him if he covered her; he said he did, so I thought I would step in to see if she was covered and was all right. As I went through the room where she was, I walked up to see if she was covered; she was all right. Then I went out of that room from the sitting-room, and as I turned to come back I saw her jerk her—kick her feet and her arms, throw up her head and jerk back. And I walked up to her and I see right away that she was going into a spasm. Her eyes were turned to the ceiling, and she was going right into a spasm. And she frothed at the mouth, worked in this spasm I should think about fifteen minutes, froth at the mouth; I see blood come from between her teeth, and I saw right away that she was chewing her

tongue, so I put my finger between her teeth to save her tongue, and she began—she came down so hard on my fingers that I called her father; I told her father to go and bring me a fork, which he did, and I put the handle of the fork between her teeth, to save her tongue, and she bit into the steel handle of the fork. I have examined that fork, and see it is the same one that was used on that occasion. Here is where she bit right into it.

Fork marked Exhibit B.

Q. Were those indentures there made by the child?
A. Yes.
Q. With teeth?
A. Yes, sir; they certainly are.

Mr. GORE: We offer it in evidence.
Mr. STEWART: We object to it—irrelevant and immaterial.
The COURT: I think it would be admissible.
31 Mr. GORE: I want the jurors' attention called to the indentations on both sides of the metal of the handle.
Mr. STEWART: Both sides you indicate, do you?
Mr. GORE: We indicate it just as it is. They may look at it and I will ask the witness a question with reference to that.
Mr. STEWART: Let us know which side, or both.
Mr. GORE: Well, I don't know anything about it. I will ask the witness. She is informed.
Mr. STEWART: Hadn't you better settle that question before the jury looks at it, so they will know which side they are to look at?
The COURT: The jury will have a right I suppose to inspect the fork.
Mr. BACON: We wish to formally introduce an objection to all evidence as to the spasms, fits and epilepsy, as nothing of the kind is mentioned in the declaration.
The COURT: I think the objection may be overruled.
Mr. STEWART: Has your honor read the declaration?
The COURT: Yes, sir; I think the case comes within Johnson *vs.* McGee, in one of the earlier Michigan reports.
Mr. STEWART: If your honor please, this objection may apply to all testimony put in upon this proposition.
The COURT: Yes, sir.
Mr. STEWART: And we move to strike out what has already been testified to with reference to that proposition.
The COURT: It may be understood that all testimony relating to spasms, convulsions or anything of that kind is under your objection and exception to the ruling.
32 Mr. STEWART: I understand in this as in other cases tried here an exception follows the ruling.
The COURT: Well you may have that rule. That is not the rule unless it is so stated between the parties at the opening of the case.
Mr. STEWART: I think I requested it at the beginning of the trial. If I did not, I will do it now.
The COURT: Very well.

Mr. STEWART: That wherever there is an objection made, there shall be an exception to follow.

The COURT: That may be understood.

Q. Mrs. Fye, how long did you have this fork handle in the child's mouth; do you remember about that?

A. From the time that she first began to chewing. I could not just say how long. I should think about ten minutes.

Q. Did you turn it over during that time?

A. Yes, sir; I don't know but what I did, because I once got it too far back in the mouth, I was afraid I was hurting her tongue.

Q. Were there any marks on the fork handle when you put it in her mouth, that you remember of?

A. Not that I know of at all.

Q. When did you first discover these marks?

A. After I took it out of her mouth, after I laid it on the table, because I remember she bit down so hard on my finger that I could not have stood it.

Q. You say she remained in this spasm about ten or fifteen minutes?

A. Yes, sir.

Q. Was the physician summoned?

A. Yes, sir; her father ran for a doctor. He came just as she was out of the spasm; we had put her feet in hot water, and water to her head, and bathed her to her knees, and water to the
33 back of her neck, and we had her prstty near out of the spasm by the time the doctor got there. She was done working and shrieking and frothing at the mouth when the doctor got there.

Q. During this spasm what was the position and appearance of her eyes?

A. Turned away up and her face was perfectly purple. I could see nothing but the whites of her eyes.

Q. Did you notice the pupil of her eyes?

A. I noticed them before she took the spasm; the pupil- of her eyes were very large.

Q. You say she frothed at the mouth?

A. Yes, sir; and shrieked.

Q. Now tell about that shriek and when it was.

A. When she was going into the spasm, and moaning as she was coming out.

Q. How soon after she was through the convulsions was it when the physician came?

A. Well, I should think about ten minutes.

Q. She had been over it about ten minutes when he came?

A. Yes, sir.

Q. What doctor was there?

A. Dr. Baldwin.

Q. The same gentleman that dressed her wounds?

A. Yes, sir.

Q. Did he prescribe for her?

A. Yes, sir.

Q. Well, how long was it after this spasm before she was up and around the house?

A. Well, maybe an hour or so. She, of course, had her high fever, and she seemed to revive up in about an hour afterward. She complained of her head hurting her.

Q. Did she thereafter at any time have any other convulsions or spasms?

A. Yes, sir. The third day after that again she had another spasm after that, not quite as hard as the first one.

34 Q. How long did that last one last?

A. She waked up; she had taken her nap and waked up screaming and crying and trembling, just like a drinking man with the tremens, and as I ran to her she grabbed onto me and I picked her up. She said, "Mama, oh, get the dog away, get the dog away," and I could not convince her for a long time that there was no dog in the room. So I took her into the next room and walked the floor with her, and she thought she seen dogs all around again. "Open the door, mama, and put the dogs out,"—she was just trembling and screaming and clutching onto me just as hard as she could. It was a long time before I could convince her that there was no dogs in the room. So I went right to work and gave her the spasm medicine that the doctor left for her.

Q. You didn't call the physician this time?

A. No, sir; not that time.

Q. And I will ask you if the symptoms of this second attack were similar to those of the first attack?

Mr. BACON: We object to that as a medical opinion.

Q. Do you know?

A. Yes, sir.

The COURT: Well, however that may be, I think she had better describe the symptoms generally. I think she has. If she has not, then she should go further.

A. Well, they were similar to the first.

Q. You mean they were similar to the first, but they were not as you stated, so severe?

A. No.

Mr. BACON: That is suggesting the very question.

Mr. GORE: She has so testified.

The COURT: Well, if she has already testified they were not so severe.

35 The WITNESS: I have said they were not quite as severe as the first, but of the same nature; fever, trembling, and seemed to be frightened to death, almost, thinking that the room was full of dogs.

Q. Mrs. Fye, had this little child ever had spasms or convulsions before December 16th, 1897?

A. Never before.

Q. Had she been troubled with sickness or fever before?

A. Not only when she had the measles. She had fever when she had the measles. That was since she had the spasms. She never had a fever before that I noticed.

Q. I mean before December 16, 1898.

A. No, sir. She did not have that little black knot there under her right eye before she was bitten; that seemed to appear when she was bitten; and it would get a little better, then get a little worse up to this time; it seemed to appear ever since, more or less. Some days the scar on the side of her face will look very red and irritable; then again it will look pale, and when that looks that way her eye looks very irritable, and her eye would get matterated and run water; she could not see in the light of a lamp or day; complained of that eye being weak and hurting her for about two weeks after she was bitten on this side here (indicating on the left,) this cheek that was bruised there black and blue, and she couldn't open her mouth to eat without crying; she could not—the morning afterwards Mrs. McMichael brought her in some oat meal and she could not open her mouth wide enough to get the spoon in without crying—without great difficulty; and then she continued those symptoms for about two weeks; that is, about two weeks before the soreness left her face, and three months or over before
36 the soreness left her head. Mrs. McMichael remained in our family until the 14th and 16th of April, and I guess for a month afterwards. She was present when the child had these spasms

Cross-examination of Mrs. HANNAH FYE by Mr. BACON:

This little girl had the measles in April, I think, I believe it was, I don't hardly remember; I believe it was before she had the spasms that she had the measles. It was, I should say—I guess it was a month or so before, it seems to me. Dr. Smith was there only once, and we called him for the measles. She was sick with the measles in bed about three days. She had them light; she seemed to get over them quite soon. There was medicine given her then. She had fever on that occasion. Of course, they always have with measles. Mrs. McMichael had some children and they had measles and some fever. My little girl had them first; then Mrs. McMichael's children had them, about two weeks, two weeks after. Dr. Smith is in Niles. Dr. Baldwin made several visits—he dressed the wound, took these stitches. After he dressed the wound he came again. He was there twice that night. He was there and dressed the wound, then he came again later in the night; then he came the next day, and I think he continued to make about five visits until about the time he took the stitches out. After he took the stitches out I don't think Dr. Baldwin made another visit. Dr. Baldwin is in Niles. Neither Dr. Smith or Dr. Baldwin are here. Dr. Baldwin arrived soon after the first spasm. I told him of the symptoms as well as I could. I called his attention to what I knew about them, and he left medicine with me. I gave that medicine when the second spasm came. That was the third day after

the first. I didn't call Dr. Smith nor Dr. Baldwin
37 except this one visit of Dr. Baldwin after the first spasm. I had no doctor after the first spasm, except Dr. Baldwin, and I only called him that one visit. I was careful with her, kept her quiet and done all I could. I am a woman that generally uses a great deal of my own judgment in regard to sickness. I generally doctor my family a good deal myself. Of course she got out of her spasm and seemed to feel better. I told Dr. Baldwin the symptoms when he came as well as I could. I was quite experienced in such matters. When Dr. Baldwin came there that night I did not call his attention to this injury at the eye, nor did he notice it. He didn't mention it that night, because I was so overcome that I could not look at the child; but I called his attention to it the next day. He had her all bandaged over, particularly her head and chin and all, and when he took the bandages off of the chin then he noticed the scar, that the skin was torn off the back of her ear. I called his attention to these marks. The skin was broken under the eye. The skin was broken behind the ear, and in two places on the face.

These wounds were bleeding, both on the face; back of the ear, I didn't notice that bleed. This injury to the eye was so as to produce bleeding. It was more of a bruise like, in there, and then a broken skin like, here on the lid, and kind of above the upper lid—catched a little on the upper lid. I cannot say that the skin was broken on the eye or about there; this here, just below the lid. I pointed this out to the doctor. On the occasion of this injury I was where I saw my little child in the room I call the sitting-room. The other is the dining-room. The room where the child was injured was the dining-room. In the sitting-room there was a stove.

38 Supposing the stove was right opposite me; I sat here (indicating); the dining-room door opened like there, and my child sat right inside, just opposite, so I could see my child all the time in the dining-room. There was no one in there when the child was at that time. She went into that room first, before the dog. We were busy, engaged in talking; Effie was telling something that happened in Chicago, and the first — I saw the dog go out, I thought I would go after and get my little girl; I thought the girl would be afraid of him; but I thought he laid down just inside of the dining-room door, so I thought it was all right; I never had heard of him biting children at that time, so I was not afraid until—I guess it was not more than a minute, I heard him bark a vicious bark, and bounce right just as hard—almost shook the room—of course such a heavy-weighted dog,—and as I looked, he was right over her, and I screamed and ran—her father was the first one to her; he kicked him off of her, and I grabbed her and ran with her into the sitting-room. I saw the child at the time she was injured; it was a few moments afterwards. Just as I looked out, just as the dog barked, and the child screamed, I looked and said, "O, my God! my child!" and I ran, and the dog right on her. Her father kicked him off of her. I was sitting so I saw the whole of that.

I remember that on that evening there was some beer used there.

The beer was brought out to treat these young girls. My husband did not bring it out. I brought it out myself. Just one bottle was brought out.

Q. Do you remember the fact that some beer was given to this little girl?

A. Simply she took one or two sips of my glass of beer be-
39 fore she was injured. She did not have more than one drink of beer before she was injured. Well, just two little sups out of the glass that I had. I never had a glass of beer in my house before in my life that I can testify to. There was a glass of beer there that night. Just little pint bottles. I had got those just about an hour before the young ladies came. There was a case brought there, a little case of pint bottles—six.

Q. Weren't there more than one bottle brought out while these girls were there, before this child was injured?

A. No, sir; there was not. She drank it from a little wine glass that I had in my hand. She drank out of my glass. She didn't have one of her own that she used. I remember there was only one bottle brought in while the girls were there. There was not more than that—there was not two or three bottles; there was just the one bottle laying on the table. The child had no beer before these girls came in. I don't remember mentioning while these girls were there about her having some before they came; I don't believe I did. I don't remember mentioning the fact that she had several drinks; I don't remember mentioning anything of the kind. It is not a fact that she had two little mugs of beer while they were there before she was injured. Her father was present while all this was going on.

I had known this dog several years. I don't say for certain, but it seems to me as if it was about that long. I have went by there many times some years past when the dog was in the yard, and he would come bouncing like a lion to the front fence. That had been going on for six or seven years before that. I had known him and known his habits about that long.

40 Q. Now, you let him into your house that night, did you?

A. Why, just as soon as I opened the door the dog was the first one to bounce in and frightened me. I didn't expect the dog at all. My husband was there when the dog came in. It was my husband that started to the door. Well, he started, yes; I saw he was taking off his shoes to go to bed; and he started; I said, "Go to the door." I didn't expect it was those girls because it was so late. So he started to the door, and I got there first and went to open the door, and just as I opened the door the dog came bouncing in first; it kind of startled me, for I didn't expect such a thing. And my husband looked at him and he said, "Well, I had just as soon have a cow in my house as that big dog." And Alice wanted the baby to pat him and make up with him——

Q. Did you say anything to your husband about the dog on that occasion?

A. Did I?

Q. Yes, give him any warning—what you had been speaking of;

you had known him for years, you said, and known of his being very vicious as you tell about.

A. Why, I had known him as I had passed there; he came bounding up to the fence.

Q. You spoke about that. Did you say anything about that to your husband that night?

A. No, sir; I did not ask my husband to put him out doors.

Q. Nothing was said about putting him out doors?

A. He gave them a good hint to put him out. My husband said he had just as leave have a cow around in his house as a big dog. And they wanted the baby to pat him or put her on his back; he said, "No, I am afraid he would bite her." I was afraid it might offend the girls to tell them to put him out. This was before the child was injured.

41 Q. How long had the dog been there?

Mr. GORE: Do I understand you that nothing was said about the dog—about his likelihood of biting the child by the girl? Do you wish to be understood as saying there was nothing said at that time about that dog hurting the child?

A. No.

Mr. GORE: Was there anything said about that by Alice or——

A. Alice, when she——

Q. No, I have not asked for what Alice said.

Mr. GORE: About the dog.

Q. I asked if anything was said, your honor, and I wanted to call her attention to it. I don't think she would want to be understood as saying that nothing was said.

The COURT: It would be well enough to call her attention, but I do not think she should now testify as to what Alice said, because that has not been called for on the direct examination.

Mr. KNAPPEN: He said if there was anything said.

A. My husband said no, he was afraid that he might bite the child, Alice said——

Q. That was in your presence?

A. That was in my presence—Alice said, "Oh no, he is used to children. We have children down there," something of that kind. My husband did nothing at all. I would not have the child pat him. The child didn't touch him. The dog had been in the house about twenty minutes before the child was injured. This talk had taken place. The dog was the first one into the sitting-room where we were. He lay down on the floor, and was walking around, and the baby went out in the other room. I call "the other room" the dining-room. He first was in the sitting-room; he was with

42 us quite a while. The place where the child was hurt was in the dining-room. In the sitting-room there was a coal stove and fire.

Q. Well, after he had been in there a little while, he became warm and went into the other room, didn't he?

A. I don't know, I suppose so. There was no fire in the dining-room. It was a cooler room. I am not mistaken with that matter;

the child went in there first; the dog did not go in there first. For after the dog went out I thought I will go and get her, because I knew she would be afraid; and I was waiting until Effie finished what she was telling. I thought—I looked after him—I thought he laid down just inside the door, as I thought it was all right. He wasn't there more than a minute when I heard him bark and bounce right at her, and fairly shook the house. I didn't see him after he went into the room. I didn't see him lie down. I didn't see him until I looked up, until he had barked and the child screamed, and I looked up and he was right over her. I had not seen him after he went in until I heard him bark. My attention was directed to something else. I looked—I kept my mind on the dog all the time, because I didn't feel exactly contented to have the child in with him, although I didn't think at the time—I never knew of him biting any other child; hadn't heard of it at the time. I didn't think he was a vicious dog. When the effort was made to have the child get on its back, no one took hold of the child to put her on. Alice wanted to put the child on its back, but she did not. She went back and would not let her touch her. No one put the child's hand on the dog's head in the room where we all were. There was no one in the other room. Nor did the child put its hand on the dog's back, or head, that I know of.

43 Q. Now, we will pass to some of these symptoms. You say when the first spasm came, you saw the little girl making convulsive motions. You noticed her I suppose?

A. Yes, sir.

Q. As far as you saw it—she had both hands, both arms, both legs, or only with one?

A. That was with both.

Q. Both with the arms and with the legs?

A. Yes, sir. And her head brought back; yes, sir.

Q. After that spasm was over, did the child have any—did she drop to sleep into a slumber, or did she keep very busy?

A. She kept very nervous and wakeful; complained of her head hurting her, and would get up on the lounge on her hands and knees and lay there.

Q. I mean within a few minutes; did she go to sleep?

A. No, sir, she didn't.

Q. You don't remember any sleep at all after that spasm?

A. No, sir.

Q. Nothing of the kind?

A. No, not close afterwards.

Q. Not within an hour or two?

A. No, sir.

Q. Now, after the second spasm, that was the third day after?

A. Yes.

Q. Can you tell us what day of the week that was? Is there any way you can fix on what day of the week it was that she had this first spasm?

A. I think it was on Monday, and I think it was on Wednesday that she had the second one.

Q. Now, when she had this second spasm, you say it was preceded with something of the same symptoms as the first one? Was there a fever before both of them?

A. Yes, sir.

Q. A high fever before both of them?

A. Well, not as high with the last as there was with the first.

44 Q. Yet there was a high fever?

A. Oh her temperature I think was 104.

Q. How do you know that?

A. Well, the doctor tested with the thermometer.

Q. After he came?

A. Yes, he said it was caused from high temperature, and the lady that lived in my house spoke up and says, "That child has never been well since the dog bit her."

Q. I am not asking you what this lady said.

A. Yes.

Q. Well, how long had she had that fever before the first one?

A. All day.

Q. Could you notice by taking hold of her hands or otherwise, that she was very hot, for several hours?

A. Yes, sir.

Q. Before this first spasm?

A. Yes, sir.

Q. Was there a fever before the second one, too?

A. Yes, sir.

Q. A high fever?

A. Not as much so as with the first.

Q. And you say that her appetite has been not quite as good as ordinary before the first one—but she had been enjoying a fair appetite?

A. Yes.

Q. And you had not noticed that she appeared to be about well, except nervousness?

A. No. She was very nervous and irritable and very fretful all the night before; she was not—she always complained of being tired.

Q. About how long was that after the stitches were taken out? You have told about how long after the injury the stitches were taken out, the third week, was it?

A. Yes, sir. The stitches were taken out on the seventh day.

45 Q. Well, then from the time that the stitches were taken out until this first spasm, was quite a while, wasn't it? The stitches were taken out about the end of December, and the spasm came on the 14th day of April, as I understand it?

A. Yes, sir. But she always, ever since she was bit, seemed to have that tremerous, nervous, spasmodic way with her.

Q. Was there any fever?

A. I have thought a good many times in the night that she was going into a spasm; and the day that she had the spasm I was not

at all disappointed, because it seemed from her actions and nervousness and tremer-ousness that I was looking for that.

Q. Well, I was not asking for that. Had she had a fever from the time the stitches were taken out until about the time the fever preceded the first spasm? Had she any fever through the month of February?

A. Yes, sir. She had apparently fever, was apparently feverish and nervous, very.

Q. Had she ever had a high fever?

A. Well, no, not exactly a high fever.

Q. When she had the measles she had a fever, didn't she?

A. Yes, of course they always do with measles.

Q. Had she this fever more than one day when she had the measles?

A. I think one or two days.

Q. Did she have any other symptoms while she had the measles that you can remember?

A. Nothing not any more than measles symptoms.

Q. They broke out on her, I suppose, in the usual way?

A. They broke out, yes—they broke out in such a way, she seemed to get over them. She was sick in bed with the
46 measles about three days. She was sick and not confined to the bed with the measles maybe a week in all; she was feeling bad. She was not able to play out, for about a week. From the time that she got completely over the measles, until the first spasm, I don't just exactly remember correctly how many days it was. I don't remember just exactly, when she had the measles.

Q. Can't you give an idea how many days it was after she got well before this first spasm came on? Your best recollection; that is all you can give.

A. Oh, it was about a month I should think anyway. Because Mrs. McMichael's children had it and got over it.

Q. And hers had it about two weeks after yours?

A. Yes, sir.

Q. There is one other matter in relation to this matter of the spasms. Your father and mother, were either of them afflicted with any disease?

A. No, sir.

Q. You don't know of any at all?

A. No, sir. My father was a man 75 years of age and over when he died. He was always a strong healthy man.

Q. Did your mother or any of her near connections have any nervous ailment?

A. No, sir. I was present when my little girl was examined by the two doctors that came, and Mr. Stewart and Mr. Gore, there yesterday.

Q. You told them as well as you could, didn't you, to some questions asked you about your mother and her relatives?

A. Yes.

Q. You answered them correctly?

A. Yes, sir.

Q. As you could. Didn't you tell them that there was some ailment of your mother and some of her relatives?

A. Not at all. My mother was over sixty when she died, she was as young a woman as I am today; and she has a sister eighty
47 years old living in Niles. There isn't any stronger lady living in Niles, than she is.

Mr. GORE: The insane, I think you are talking about.

Q. One of her relatives was in the insane asylum, wasn't she?

A. One of whose?

Q. Your mother's?

A. Yes, my mother's oldest daughter was in the asylum here. There was no other relatives of my mother's affected with nervous ailment. There was no other sister of my mother's who died with consumption. My mother's only sister eighty years old, an old lady, is living still in Niles. In speaking to Doctor McGugan yesterday, in answering his questions as to my relatives, I did not describe some other that had these nervous ailments besides this sister who died in the asylum. I mentioned the sister.

Q. The daughter?

A. The sister was a lady of forty or forty-five—it was caused from her age. I didn't tell Dr. McGugan—mention any other, except this one relative, that had any of these ailments. I haven't any. I have sisters that died with consumption. I have two sisters that died with consumption, but that is nothing of insanity, or anything that way. I have not been afflicted with some lung disease myself, not any more than any ordinary woman. What I told the doctor was correct, as near as I could—to what he asked me the questions on.

Q. Right at the time of this injury to your little girl do you remember your husband in his grief, saying: "This is what I have been expecting all the evening"—or anything of that kind?

A. Not at all, and no such remark.

Q. You say he kicked the dog?

A. Yes, sir.

Q. And then the dog was let out of the house and went
48 away?

A. He kicked the dog, and the dog, as he kicked him off of the child, went and grabbed the—when he kicked him off, he went into the sitting-room and he continued to kick at him; of course he felt like he wanted to kill him right then and there. He would if he had anything to do—a revolver, the dog would never have left the dining-room alive, or if he could have got an ax it would never have left the house alive. I think he kicked the dog two or three times, and the dog turned on him like a roaring lion; he had his arm in a sling, it was broken in two places, and dislocated in the other. He knew he could not do anything whatever to help himself.

Q. The dog didn't bite him at all, did he?

A. Yes, he turned on him so viciously and very savagely.

Q. Did he bite him so hard as to break the skin anywhere?

A. No, not that I know of.

Q. He kicked the dog?

A. He kicked him three times, and the girls opened the door and let the dog out—which they did.

Q. Now, haven't you any other relative that ever was in the asylum for insanity besides this cousin?

A. Yes. The cousin that is there now; that is all.

Q. She is one, and one other relative was there?

A. My oldest sister.

Q. She died there?

A. Yes, sir.

Q. You have a cousin in the asylum now?

A. Yes, sir.

Q. And you have three brothers that died of consumption, haven't you?

A. Well, my oldest brother didn't die with consumption. He had the lung fever; that was the cause of his death, and my next brother died more from the grippe.

49 Q. Wasn't there one brother died at least of consumption?

A. I think so.

Q. You told this as well as you could to Dr. McGugan?

A. Yes, sir.

Q. Now, the biting of the tongue—was the tongue bitten so as to bleed?

A. Yes, sir.

Q. Did you call the attention of the doctor to the bitten tongue or to the wounded tongue?

A. I told the doctor how she chewed her tongue. Of course as soon as I saw the blood coming, I put my finger between the teeth to save the tongue.

Q. Did he examine it at all?

A. I didn't notice that he did.

Q. You called his attention to it—having bitten her tongue?

A. Yes, sir. I told him of the circumstances when he came, just as I tell you now.

Q. And you don't know whether he examined the tongue or not?

A. No, I don't know.

Q. Did you, yourself examine it to see how bad it was bitten?

A. Yes, sir.

Q. Was it bitten so as to have quite a deep gash in it?

A. It was bitten just at the end, so that it bled quite freely.

Q. Did that injury continue to be so it could be seen for several days?

A. Yes. She complained of her tongue being sore.

Q. But there was no—this bite was not large enough to make a wound that was visible there for some time?

A. Yes, I could see a little gash like at the end of her tongue.

Q. Right at the end?

A. Yes.

Q. And there was no other mark of the biting of the tongue except that end you speak of?

50 A. No, for I didn't let it get that way. I put the fork between her teeth.

Q. In the second spasm was there any biting of the tongue?

A. No. She was chewing like, and had that tremulous, frightened, scared-to-death look.

Q. But there was no biting of the tongue with the second spasm?

A. No, for I began to give her the spasm medicine that the doctor left, and that kind of put it back. And last Thursday she was apparently about to have another——

Q. I am not asking you about that. Your own counsel will attend to last Thursday.

Mr. GORE: I would just as soon you would attend to it, Colonel.

Q. Your little girl has had the—been playing about the neighborhood there for the past two months with other children, hasn't she? She has not been confined to the house, or anything of that kind?

A. My little girl is never a child that goes out around the neighborhood. I have been working in the paper mill, and since her father's affliction she stays closely at home with her father. I never let her mingle a great deal with other people.

Q. But hasn't she been out?

A. Just more within the last two weeks; she has been out among the neighbors; her father got work and she staid, I think, an afternoon or so with a couple of the neighbors.

Q. What neighbors did she stay with?

A. Well, she staid, I think, one afternoon with Mrs. Moore—Mrs. Emma Moore. One afternoon—forenoon, probably two half days, she staid with Mrs. Moore all alone. It was during the last two weeks that I worked in the mill. I ceased to work in the mill about two weeks ago, think. She staid also, while I was working
51 in the mill, I think, one afternoon with Mrs. Smith,—Mrs. Mary Smith. She might have stayed with her two half days. I heard she ran her all over the neighborhood here—I have heard, and everywhere, and just tired the child out. She wasn't a woman that I really fancied any way. But she said she would make this little dress. She said in order to fit her dress, to get it a good fit, that for me to leave the child there, and she would take good care of her for me,—for me to leave the child there, and she would fit her in the meantime. She was there, I should think, oh, maybe two half days, probably a little longer. That was,—well, it was this last week. I think it was about three weeks ago. Yes, she staid one afternoon with Mrs. Berge, I think, also. Mrs. Berge lives diagonally across the road from her. Mrs. Henry Moore has a little girl about my girl's age, and they play together frequently, quite a great deal. They live quite close, but I keep my child mostly to home. I never let her go with other children a great deal.

Q. And she has nevertheless been out like, with other children in the neighborhood for two or three months, hasn't she?

A. Well, no, she has been quite close to home. When her father was so that he could not work, he kept her with him most of the

time. Maybe she would be in Mrs. Moore's once in three weeks, or maybe four weeks.

Q. But hasn't the little girl been out of doors a great deal the last two or three months, since the pleasant weather came?

A. Why, yes. I let her out around the yard in her own yard, give her her little buggy and her doll and her playthings, and she plays around the yard. Laura Belle comes over,—that is Mrs. Moore's little daughter.

52 Q. Mrs. Frank Moore that lives by you—hasn't your little girl been there?

A. She went there. I went there one evening to help Mrs. Moore, and she went there with me for about an hour, while I was helping Mrs. Moore.

Q. That was all she has been there?

A. That was twice she has been there—maybe three hours altogether.

Q. How long ago was that?

A. That was the last week, only—one last week, she was there for about an hour at supper-time while I helped Mrs. Moore. I had a girl working for me by the name of Ella Willets. She only staid with me only two days; she got homesick and went back. That was about four weeks ago.

Q. Since you came to Kalamazoo has any other doctor looked at your child and examined it, except Dr. Smith and Dr. Baldwin? Has any other doctor seen that little child, that you know of?

A. No. I have been intending to take her several times to Dr. Crambel, or some other doctor, but I was so busy working in the mill, and tired always when I got home, I kept putting it off.

Q. Then the only doctors that you know of that have seen this child before you came to Kalamazoo, was Dr. Baldwin, made these visits that you speak of, and Dr. Smith?

A. Yes, sir.

Q. They are both there in Niles?

A. Yes, sir.

Redirect examination of Mrs. FYE:

Q. You were present and related the history of this case to Dr. La Crone and Dr. McNair and Dr. Crane yesterday?

A. Yes, sir.

Q. Counsel drew out from you a statement that was made by

53 Alice Harcourt, when Mr. Fye stated he would as soon have a horse in the house as that dog. What was that statement made in reply of Miss Harcourt?

Mr. STEWART: To that we object, as irrelevant and immaterial. Counsel did not draw that out by any question. It was a voluntary statement of the witness.

Mr. GORE: Yes; he did.

The COURT: We will not discuss it.

Mr. STEWART: It is remote, anyway.

The COURT: Some questions were asked this witness as to what

transpired. Of course I do not want to indicate what the court understood from the drift of the question, but I think in view of this, I think she may state anything else as to the likelyhood of the injury from the dog at that time. She may answer.

Question read.

A. Not anything that I can remember.

Q. Well, you stated, did you not, something about Alice speaking——

Mr. BACON (interrupting): That is leading.

Mr. GORE: I am calling the witness' attention to what she has already testified to.

Mr. BACON: It is leading.

The COURT: No; she may answer.

Q. (Interrupting.) Alice said the dog would not hurt her; they had children at home—something of that kind?

A. Yes, sir; that was when Alice wanted to put the child on the dog's back, and my husband said "No; I am afraid he will bite her." She said "No; he is used to children; we have children at home."

I think I have told you all that was said about putting the
54 dog out or about his remaining in the house. I did not see the dog as he sprang for the child; I looked and saw him right over the child.

GEORGE EXNER, being sworn as a witness on behalf of plaintiff, testified as follows:

Direct examination by Mr. GORE:

I will be fourteen the 30th of April. I know Charles A. Chapin and his dog named Duke. I live four blocks from where Mr. Chapin lives, in Niles. I was bitten by this dog Duke. It will be two years the 21st of September. I was bitten by him on the arm.

Q. Just step forward here and show the jury.

(Witness shows arm to jury.)

That is one of the scars and there is another. When the dog bit me I was on Thirteenth street, between Cass and Ferry streets. There was a little boy, me and Roy Gleason were playing together, and the dog was in front of the little boy, and I told—he grabbed me by the shoulder. I told him to come on back with me again, he said, no, he wanted to see if the dog would go over to his grandmother's, and just as he said "grandmother" the dog grabbed me; he grabbed for my face, and I threw up my arm, and he grabbed me by the arm. He didn't let go at once; he hung there for about a minute or two, then let go and tried to grab me again there (indicating). I jerked out of his mouth and ran away. I didn't say anything at the time. Mr. Woolford and his wife were present, and Mr. Egglestone and his wife. My arm was lame for two or three months. I carried it in a sling.

Q. Do you remember how long?

A. Two or three weeks.

55 Mr. STEWART: I object to this as irrelevant and immaterial.

The COURT: The latter part of it I can hardly see how it would be material whether he had a physician or not. The rest may stand. I think that should be stricken out.

I saw Mr. Chapin a couple of weeks after I was bitten by his dog. He spoke to me and I spoke to him. Mr. Chapin and his oldest son was up to see me while my arm was lame. The next day after my arm was bitten they came up to see me. I don't know of this dog biting any other children, only what I have heard. I have known this dog Duke, about three years. This place, where I was bitten, from Mr. Chapin's house was nine blocks.

Had seen the dog at large before he had bitten me, once or twice in a week. Sometimes I would not see him for a month or so, only in the yard. He was in the yard. I saw him after I was bitten—at large, near Mr. Miller's. I saw him up on 13th street again. Two weeks—three weeks after I was bitten, my arm was still sore then. I heard about the circumstances of the little Fye child being bitten. Have not seen him at large since then, only in the yard. There was an iron fence around the yard about six or seven feet high.

Cross-examination of GEORGE EXNER.

By Mr. BACON:

The name of this little boy that was doing something with me when the dog bit me, was Roy Gleason. He was younger than I. He is about eight or nine years old. I am thirteen—I will be fourteen. The little boy lives on 13th street, about five blocks
56 from my father's house. I played with the little boy frequently.

Q. Now you were in some particular position with that little boy when the dog bit you. Can't you describe it, how you was holding the little boy—doing something to him?

A. I had hold of his shoulder like that, (illustrating).

Q. Well, that made the dog bite you—you say, what it was?

A. Yes, sir.

Q. What was it. You could see right into it in a minute?

A. He was going to take the little boy's part, is the way it looked. That was all there was of it. He thought I was going to hurt the little boy. He did not offer to do anything to the little boy. The little boy and me had not been acquainted with the dog before. He was going along, and just as I grabbed the little boy, he stopped and turned around for me. I didn't see him molest any children when I have seen him outside the yard, or molest anybody, or even attempt to, nor bark at anybody when he has been outside. As soon as he let go of me he went about his business. He didn't try to molest me any more. Just as soon as I was clear of the little boy, the dog was clear of me.

Redirect examination:

The dog growled. He growled before he bit me. He growled and jumped at me. He jumped up towards my face. He jumped right up on his hind legs; had his paws on the side--he jumped for my face, and I throwed up my arm like that to my face, and he grabbed me in the arm. He growled after he had hold of my arm.

Q. And he maintained his hold there?

57 Mr. BACON: Well, that we object to as leading. He has gone already into that subject on the direct examination.

A. He hung on there one or two minutes.

Recross-examination:

He hung there a few minutes; then he grabbed there again. I ran away from him. He didn't break the skin. You could just see the teeth prints of his teeth. It was long enough anyhow, that he held on. He did not let go right away; he hung on there a few minutes. He grabbed at me the second time.

Redirect examination:

The exact date I was bitten will be two years the 21st of September.

WALTER CHAMBERS, being duly sworn as a witness on behalf of the plaintiff, testified as follows:

Direct examination by Mr. GORE:

My full name is Walter Chambers. I know Charles A. Chapin of Niles and his dog Duke. I was bitten by that dog. I could not tell you just exactly when it was, but it was when I was going to Ferry Street school. I was about going nine—going on nine years old. Carl Smith was with me, and he was about two or three years older. At the time I was bitten I was by the steam laundry on Main street, about one block from Mr. Chapin's house. It was about eight or nine feet from the sidewalk on the lot. He bit me right there (indicating), over the eye. That mark, that scar was made by the tooth of the dog. It drew blood on me.

Witness shows scar to jury.

58 It happened like this: Carl Smith said, "I can beat you jumping," and so he jumped first, and I jumped second. Just as I commenced to jump, the dog flew at me and bit me. He growled at the time. Then Carl Smith called him off of me. That gave me time to get home. He tore Carl Smith's coat a little bit then at that time.

Q. How did the dog appear as to being angry or otherwise at the time?

Mr. STEWART: I object to that, "how the dog appeared."

The COURT: I think that is competent to show whether he was in play or whether he appeared to be angry or not.

A. He was angry. He tore the Smith boy's coat in the back and in the sleeve. I see Mr. Chapin after I was bitten. I talked with him, and he says, "Are you the boy that the dog bit?" I says, "Yes, sir." Nothing else was said. That was the next day after I was bitten.

I do not know of that dog biting any other boys except myself and the Smith boy. I had seen the dog out at large on the streets before I was bitten. I have seen him at large on the streets since I was bitten; just once that I remember of.

I live from Mr. Chapin's house four blocks south, and south of Main street. The school-houses are south of Main street. I never play up in the neighborhood where Mr. Chapin lives.

Cross-examination of WALTER CHAMBERS by Mr. BACON:

The place where I got bit was in front of the steam laundry. The steam laundry opens on Main street. There is about
59 one block between that and Mr. Chapin's. There was another boy with me. We were jumping, towards the billboards on the back of the hill, besides the street. We were jumping on the ground between the gutter and the street, the same way the street ran, down hill. The dog was not right before me when we were jumping, he was at the side of me. Right beside me; out further in the street, standing still.

We boys had jumped only once while he was standing there; then he grabbed one of us and tried to grab the other. It was our jumping that started him. I didn't jump towards him. We had not said anything, nor called to him, or anything. He was about from here to the table at one side of us, laying down. Carl Smith jumped first and I jumped second to see which could jump the furtherest. The dog was lying down there, about as far as from where we were jumping as from you to the table, and he then sprang out and bit me. I guess it was our jumping that started him and made him do it. He had not been growling—he was lying there peaceably; he hadn't been—we had not been troubling him nor he troubling us. If we had not jumped I don't know if he would bit me or not. I didn't see any sign of it before he jumped. He was lying there perfectly peaceable. It was in the spring time. The place where he bit me got well in a little while. I never had any soreness there afterwards, or anything about any trouble after that date, except the one day after.

Redirect examination:

I didn't kick the dog, nor did the Smith boy.

JACOB ULLREY, being sworn as a witness on behalf of the plaintiff, testified as follows:

Direct examination by Mr. GORE:

60 My full name is Jacob Ullrey. I live in Niles, and have since 1880, since I came back from the South, southern Ohio; I was born and raised within two and seven miles of them, and have lived there all my life. I know Charles A. Chapin the defendant, and where he resides in Niles. I know the dog Duke, and have, I would not say positive, but I think in the neighborhood of four or five years. It might have been longer—something I never—I have known him quite a spell, but I would not say positive. He is a dog, yellow and white dog; I should judge would weigh in the neighborhood of 120 pounds, maybe more but I think he would weigh over a hundred pounds.

(Indicating:) I should think as near as I could guess, he was that tall. He is a good big dog. I should judge he was a St. Bernard. I have had occasion to pass during the last five years, Mr. Chapin's residence. I think, when I first passed along there, it was during my—before Mr. Chapin got it. It was a high iron fence. It was one Mr. Clapp owned. Then since Mr. Chapin got it, he fenced it up; there was an iron fence there I should judge between six and seven feet high, on the east, from the barn north, and west to the house, and then on the west, the southwest corner is two big gates and a fence there that makes it solid.

Q. Now then, was there a time when that tall fence came out on Fourth street?

A. That tall fence comes out to Fourth street on the south side of the house, yes sir, but the house proper forms one part of the fence, from the back lot. The fence never extended to the street on the north and west. The house is out on the line about half

61 way of the lot I think where the house comes down, then from there on to the northwest corner, I don't think there was ever a fence there. It was paved and then from there around to the gate where you go into the barn, the front entrance, there is a drive, and then there is a fence against it, comes up to the house. During these five years that I had occasion frequently to pass by these premises, I encountered the dog. The evening of the 11th of last November my son was called away, and he delivered papers there in Niles, and I went to the depot and got the papers and brought them down, the Evening News, from Chicago, and stopped to deliver a paper at Mr. Pearson's—who lives across the road in the old Lacy property—no—Abbott—Weekly property, and they had a dog that always went for the paper, and I gave him the paper; he would take it into the house, and when I called him to take the paper in I wasn't going to get out of the buggy; I didn't have to, with him; Mr. Chapin's dog came out and tackled him, and he came across the street and I jumped down to protect the dog, and the dog jumped at me—that was the evening paper. I never placed my mind exactly on what time so as to know it, but it was the Evening News from Chicago came in there; it was dusk; and the

dog then jumped at me, and when he jumped at me, I grabbed him both sides of the neck and kicked him two or three times, and about that time Mrs. Pearson came out, she heard the noise, and I throwed him away back from me, and I heard some one across from the street call the dog—it was from Mr. Chapin's place. I picked up a stone and threw it and struck the dog when it was about half way across the street. I never said much of anything about it. When he was called he went to his home. But I kicked him two
62 or three times. He appeared to be angry when he made this assault. He growled when he jumped at me. He made a growl and I grabbed him; I see it was the only alternative I had, and I kicked him two or three times and I heard a call, so I throwed him from me and he went across the street and I picked up a stone, and he was about half way across the street. I hit him with the stone. I have seen the dog out at large in Niles on other occasions during these five years. I have seen him on the streets since December 16th, 1897. I saw him on Sycamore street, up above Mr. Chapin's, I think it was about a block. I remember the circumstances of Mr. Fye's child being ass-ulted by him. It was since that time I saw him at large. I couldn't say but that one time that I saw him at large since that time. He had made other attacks upon me, when passing along this iron fence. I walked along by the fence, and walked probably, in the last three or four years, I have averaged, I presume once a day if I have been in—I have been in business around town there, truant officer there, and lots of times I have walked by there and I have been more or less on the police duties there.

The experience I have had with him on those occasions in passing were, he would come out to the fence and jump and bark as if he wanted to get a hold of me; but I never paid no attention to him. I walked along. He would not persist at that. He would make a bark and go back, run along the fence and bark and growl. I remember twice, three times there has been others pass with me, and we have walked along there and he has come out and growled at us; but I couldn't say any more.

Witness then described location and fence around defendant's house and grounds.

63 The dog plays in here between the house and the barn. The barn is part of the premises. That high fence that the house separates the barn and the rear lots and the house from the front line. I only know what I heard about this dog biting other children.

Cross-examination by Mr. BACON:

My dog was in trouble with this big dog when he turned upon me. He jumped on the dog I had charge of, that is, to bite him. He had hold of him. My dog was fi*tgh*ing back yes, sir—doing the best he could. The first thing I did when I came up close to the two dogs, was to yell at them in a tone—then I jumped and kind of drawed his attention, then he jumped at me and I grabbed him.

I did not kick or do something when they were fighting. I jumped at the dog, I yelled at him and went right up towards him. I was going to interfere and stop him biting my dog. The two dogs were fighting and I made as quick an advance on him as I could because my dog didn't have a fair chance. So I intended to interfere in the dog fight just as quick as I could; that was my purpose. The dog understood it. Because he was the biggest dog, I thought it was unjustifiable. He didn't hurt me at all. I served him about as hard as he was serving my dog. When I speak of seeing him inside of the fence I mean to say inside of this high iron fence; inside of both fences. I do not know whether the wire structure is for some flowers that have been put down there or not. That is a very frail iron fence. I don't think he can have access right around between the two, I think that the end here where the wire comes out and comes around to the post here. It is not a barb-wire fence; it is of plain wire, such as they use to put flowers in. Between this wire fence and the high iron fence, there are flowers planted.

64 The wire fence keeps the dogs from running on the flowers; of course if it was not there, that wire fence, the flowers would be all used up by the dog or any other creature or person. The way I have seen him go tearing around there he would tear those flowers all up. If there was children playing there they would be on the flowers in the same way. They would not have any flowers there unless they had some such wire fence.

I took Mr. Gore around while in Niles to hunt up testimony.

I have no animus against Mr. Chapin; he has befriended me.

Redirect examination:

I took you to Exner and to Chambers.

GEORGE W. BOONE, being sworn as a witness on behalf of the plaintiff, testified as follows:

Direct examination by Mr. GORE:

My name is George W. Boone. I am fifty years old and have lived in the city of Niles since the 10th of last September. I am not very much acquainted with Charles Chapin, the defendant in this case. I know him when I see him. I know where his residence is in Niles. I know this dog Duke that belongs to him. I should call him a St. Bernard. He is probably 32 or 36 inches in height, would weigh 115 or '18 or '20 pounds. I have had occasion frequently to pass along the sidewalk adjacent to Mr. Chapin's premises. I presume that I have known the dog ever since he has had him, but I couldn't tell you the exact length of time. I will say four or five years. I have had occasion at times to pass his residence three or four times a day. In passing the Chapin premises I have encountered the dog many times; the dog would run out and bark,

65 act vicious and seemed as though, he acted as though he would like to tear the fence down and get out somewhere, it seemed; but having the iron fence there I wasn't at all alarmed about going by.

Mr. STEWART: I move to strike that out as irrelevant and immaterial. The dog was in the enclosure.

The WITNESS: But the dog acted in there——

The COURT: I think this may stand.

The dog would pursue me along the whole length of the fence, yes, sir; as far as he could. It was not always his custom to do that. I have had an encounter with this dog. It was about, I think, my head is a pretty good calendar—I noted down the date but I lost it—I think it was about the 18th of January, 1896. I saw him between 13th and 14th streets. I remember of the circumstance of the assault upon the little Fye girl. He never made any attack upon me only in the form that of his actions inside the line, inside of the Chapin yard; that is all. That might have been a supposition, perhaps a little feared or something of that kind. I remember the circumstance of his biting the Exner boy. I saw him at large before and after that.

Cross-examination by Mr. BACON:

When I have seen him barking inside the fence, I do not know whether there was any other dog outside that was attracting his attention. I would not swear whether there was or not. There are so many dogs in the city of Niles, it is pretty hard to tell.

Redirect examination:

I had no dog with me on these occasions.

66 Q. Did he appear to be barking at you or at something else?

Mr. STEWART: Wait a minute. I object to what he appeared to be doing. He can state what he was doing. That is all.

A. He was barking at me direct. That is the answer.

GARRET OWENS, being sworn as a witness on behalf of the plaintiff, testified as follows:

Direct examination by Mr. GORE:

My name is Garret Owens. I am 67 years of age. I live in Niles and have for the past 15 years. I know the defendant Chapin by sight ever since 1854, when I first met him. I know where he lives in the city of Niles. I have seen his dog a great many times. I have known that dog betwixt three and four years. I have had occasion since living in Niles to pass along Mr. Chapin's property. I lived just one block north or east of there one year, 1896. I passed there several times a day some days. I was going up in January, 1896, betwixt sundown and dark, I met him on the streets—on the sidewalk, he was about ten feet from me; he began to growl and I acted as though I wanted to walk around him; he kept crowding up to me; came around at me; I supposed he would have bit me. I looked for a stone or something to throw at him,

and I saw there was a stick laying there about three feet long. I picked up that and he skipped across the street and run, but I didn't think any more of it than I would of any other dog. I never knew of him jumping at anybody before. In passing by the premises when he was inside the fence, I have
67 seen him running up and down the fence and barking; but whether he would bite anybody or not I didn't know. I couldn't tell. There was a high iron fence between him and the sidewalk; he couldn't get over no way; I think that Mr. Chapin aimed to keep him in the yard, and sometimes when they would leave the gate opened, or the door opened in the barn, he would come through the door and go out. I think it was the calculation to keep him enclosed there. I have seen him rush to the street when passing by, sometimes once a week; sometimes it would be more than that. Sometimes I would pass there a dozen times and never paid no attention. He made a kind of a path, he would have; he would run up and down there along the fence, and especially if dogs would run up and down the fence, he would run up and down the fence worse after dogs than he would after anybody else.

When I would walk along there his conduct indicated that—I would rather have the iron fence betwixt me than not to have it there. I heard of the assault upon the little Fye girl. I have not seen the dog at large since then. Before December 16th, 1897, I had seen this dog at large in the city, occasionally; but I never saw him out but very little.

Cross-examination by Mr. BACON:

This time that I used the stick on this dog, as soon as I picked up the stick he ran. I thought he was kind of cowardly. If I didn't get the stick I guess he would have bit me. When he growled I was going home and he was coming from his home. I was going north and he was going the other way. That was on Sycamore. I guess I got within five feet of him when I got the stick. He hadn't begun to make any jump, but he was
68 coming right at me, just growling, his hair all turned up, and was coming at me growling. Most anybody would have thought he was going to bite them. As soon as I picked up the stick the dog put.

When I lived up near there, there was no wire fence there running from that corner to this corner (indicating). The dog had free access to that part.

Mrs. HATTIE MCMICHAEL, being sworn as a witness on behalf of the plaintiff, testified as follows:

Direct examination by Mr. GORE:

My name is Hattie. I have heard Mrs. Fye's testimony this morning. I came to live with Mr. and Mrs. Fye September 9th, 1897. I lived with them and in their house until April 18, 1898. I know Mr. Chapin here, the defendant, when I see him. I did not

know Alice Harcourt nor Effie Stevenson. I know this dog Duke when I see him. I have lived in Niles all my life, 27 years. I don't know how long I have known the dog, I couldn't tell. I don't remember when I first saw him. I was present at the Fye residence on the evening of December 16th, 1897. I was in the portion of the house occupied by Mr. and Mrs. Fye when the girls came and brought the dog. I was not present when they came in at the door.

When I first saw them they were in the dining-room, that is Alice, and one that they called Alice and Effie. Mrs. Fye was in the sitting-room walking back and forth, walking the floor with the child in her arms, and Mr. Fye was in the dining-room. This was after the assault. I was not there when they came that evening in that part of the house occupied by Mr. and Mrs. Fye,
69 when these girls and the dog arrived at Mr. Fye's house. I was in my own part. My part of the house joins Mrs. Fye's on the west side, the southwest side. My room communicates to their sitting-room.

When I first saw the child she was lying in her mother's arms, and she was bleeding perfectly terrible. I could not see her face for the blood; and she asked me to do something for the child; and I went and got a cloth, wet it in some warm water and applied it to the child's head, and the gash laid right back, that is, the V-cornered piece laid right back; had pushed it back, and I laid the cloth over the child's head. This V corner laid right back. I took the cloth and pushed it down this way (indicating). I could not state at that time whether there were any injuries on her face or not, because there was so much blood flowing.

Alice Harcourt and Effie Stevenson were crying and screaming when I went in. I don't remember what they said, if anything. They commenced talking about bringing the dog up there; Effie seemed like she didn't want the dog to come, and she laid it to Alice bringing the dog, and they were disputing over how the dog happened to come there. Effie spoke up and said, "The first time they had ever come there and have such an accident as that happen"—and they felt perfectly terrible over it. Effie said that she didn't want Alice to bring the dog, and then Alice spoke and said, "Well, you know Miss Lucile Chapin told us to take the dog for protection." Effie spoke and said, "I had just as soon have a big cow follow me as that dog." That was the talk that was going on there when I came in there.

The dog was not in the room then. I continued to assist
70 Mrs. Fye with the child. Mr. Fye had not gone for the doctor when I came in there. He went during this conversation.

Dr. Baldwin came. He came in and went and looked at the child, and came back to me and asked me if I was the one that was applying the cloths. I told him I was; he told me I was doing all that could be done just then; to continue it until he went back and got his needles and the nurse. I should judge he was gone fifteen minutes, perhaps it might have been longer. He lives from the

Fye residence, the second house north. No, east; only just a little ways. When he returned the second time with the nurse, he went right to work with the child, took the child, and they commenced to undress her, and she was screaming all the time that he had her until she was under the influence of chloroform; then he dressed the wound. I don't know how many stitches he took in the wound. She had been bleeding something terrible, so just as fast as I could get the cloths out of warm water and get them to her head, she would fight so, and let a scream, and it would take two or three minutes to get the cloth on her head, and the blood was oozing from her head. I saw the place in the room where she was injured. The wall there was all spattered up with blood, up that high (indicating), on the wall, clear around the mop-boards, carpet, in the dining-room. I remained in that family from that time until April 18th. During the time I staid there I assisted Mrs. Fye more or less in caring for the child. I gave her most of the medicine that she took. The child was confined to her bed and carriage, I should think, three or four weeks. During that time I would go in and help her all I could. I had occasion to see the child frequently during that time. I seen her a dozen times a day anyway.

71 I had known her before December 16th, 1897, ever since she was a little child, but of course I never had seen much of her until I lived in the house with her; that was September 9th.

During the first three or four weeks after she was bit, she was nervous and flighty at night. She complained of her head. She complained of her head up to the time that I left there. That was April 18th; and that is all of course that I could see of it. I never heard anything from her until after the dog bit her; then after the dog bit her, she would wake up crying, I could hear her; of course my bed-room was adjoining where they slept, and she would wake up crying, "Take that dog away from me. Take that dog away, mama. Oh, don't let that dog bite me. Don't let the dog get me." Or, "Mrs. McMichael, I don't want you to put that cloth on my head. Don't put that hot water on my head," she would say. That was up to the time that I moved away from there; she would keep talking that way nights.

Q. Now, Mrs. McMichael, speaking now about the condition and general appearance of the child since the assault and previous thereto, what is the difference in her?

A. The child isn't the same child. I was not present on the 14th day of April when she had the first spasm. I was just as she was coming out of it, I happened to be there. I had been there a day or two before the 13th and 14th. I was at home. The difference I noticed in the child's conduct was, the blood seemed to rush to her head, and she complained of her head. She used to come in and complain to me—of course we were in and out, my children and her; she would say, "Oh, Mrs. McMichael, my head hurts me awfully." She used to oftentimes come in and lay down on my couch and say that she was tired; and then she would lay

72 over and go to sleep sometimes, that was all. I don't know of the child having any cold or being sick on the 12th or

13th. Her face was flushed on the 14th, and she was very irritable with my children; she didn't want them to touch her playthings or notice her. Well, she wanted, it seemed, to be by herself more, kind of nervous.

I remember Dr. Baldwin being called when she had this first spasm. I wasn't there when he came. Medicine was left for her. I did not give any of that medicine myself. The child appeared when I first saw her on the 14th, after the spasm, as she was coming out of it, very nervous and seemed—well she didn't seem to have any life at all, no ambition; she didn't want to play or get up. She just wanted to lie still, kind of.

Q. How long would she remain in that stupor?

A. Well, I should judge an hour or two hours.

Mr. STEWART: What time are you inquiring about now?

Mr. GORE: On the 14th. This is immediately after she came out of the spasm on the 14th.

The child had been going about the premises that morning as she usually had. I did not know of her having taken any medicine during the week preceding. I recollect when the child had the measles; I think it was the fore part of April, the first of April.

Q. Two weeks you think before this spasm?

A. Well, I cannot tell you, I am not sure.

I was not present on the 16th when the child had the second attack. I saw the child on that day, both before and after she had the convulsions. I did not notice any change in the child. Nothing only that she was very nervous after she had that spell on the 16th. On the 16th she didn't want to play; she didn't want
73 to get off from her mother's lap. She wanted her mother to sit and hold her. That was after the spasm, after the attack of the 16th.

Cross-examination of Mrs. McMICHAEL by Mr. STEWART:

Q. Mrs. McMichael were you present on the 14th of April, when the child was first taken?

A. No, sir.

Mr. GORE: Just a minute. I just wanted to ask another question. When Dr. Baldwin came to see the child, when she had the first spasm, I had some talk with him. I asked him what was the cause of it, and he said "High temperature." I asked him what caused the high temperature, and he made me no reply. Then I said "I know what the cause of it is," I says, "it is the effects of the dog bite." He didn't make no remark to that.

Q. Do you remember how long it was before the child's face had recovered from the soreness, the face I refer to now?

A. Well, I should think, well two weeks I should think.

Q. What was the appearance of the face during——

A. (Interrupting.) It was all black and blue and green and bruised.

Q. I will ask you——

A. (Interrupting.) She would not eat anything; the next morning when I offered her some oatmeal she went to open her mouth to take some, and she screamed, it hurt her so. I know what portion of the wound was the last to heal. It was this scar right here (indicating). In the point of the V a little pus gathered there, right at that point.

Mr. STEWART (continuing):

74 Q. I think I asked you whether you were present on the 14th of April when the child first gave this manifestation of a spasm.

A. I was not. I guess it was about twenty minutes after that before I was there. The child was not in the spasm when I came. She had come out of it. She had; she was just coming out of it when I went in.

Q. What did you observe as to the condition of the child at that time?

A. I didn't understand your question.

Question read by the reporter.

A. I don't understand it now.

Q. You don't understand it now?

Mr. GORE: In the appearance, Mrs. McMichael.

Q. What was the child doing?

A. She was lying on the lounge.

Q. When you say she was just coming out of the spasm, what do you mean by that?

A. Well, so she was just commencing to look around the room and notice things. She was just lying still on the lounge, just looking around at things; she wasn't seeing anything. She said nothing. She didn't get up at all while I was there. I was there probably three-quarters of an hour, or an hour. I don't think the child went to sleep afterwards, after she came out of it, immediately. It seems to me she went to sleep in the afternoon following, but I won't say. I was very busy that day.

Q. If you only staid there three-quarters of an hour, how do you know she did?

Mr. GORE: She doesn't say she knows.

A. I didn't say that I knew. It seems to me I was in there when she was waking up in the afternoon. About 4 o'clock, maybe.

75 She was in the spasm about 11 o'clock I should say; it was about half past eleven when I went in there and she was coming out. I staid until 12 or a quarter after. I couldn't tell what day in the week it was.

Mr. GORE: She says she could not tell.

Mr. STEWART: Never mind. I will take care of the witness and when I am through you may take her.

Q. What day in the week, as near as you can recollect?

A. I don't know. It might have been Monday and it might have been Thursday; I don't remember.

Q. What is your best recollection, madam?

A. Well, Monday. I have two children. One boy and one girl. Five and four years of age. They were not then sick. They had not been sick since—only had the measles since she had them.

Q. When they had the measles; that is exactly what I am getting after.

A. They had them about—she came down on Thursday, I think, and they broke out about a week from Saturday following, about nine or ten days.

Q. Had they been over the measles about ten days before the child here was taken with the spasm?

A. I couldn't tell you.

Q. What is your best recollection?

A. Well, I don't remember a thing about that.

Q. How long were your children sick?

A. Well, I kept them in the room a week, in a dark room.

Q. Were they both taken sick at the same time?

A. They were.

Q. And got out at the same time?

A. Yes, sir.

76 Q. And they had been well about ten days, you think, before the young child here had the spasm?

A. No; they had not been well that long. I moved away from there on the 18th of April.

Q. On the 18th of April?

A. Yes, sir.

Q. That would be only two days following the second event or spasm, would it?

A. Well, I don't know as to that.

Q. How long had they been well before you moved away?

A. Well, not only a few days; well, a few days they was out, I guess—I will take that back; that was about ten days, ten or eleven or twelve days.

Q. Before you moved out?

A. Yes.

Q. And then from your former statement it was nearly two weeks after the child here in question had the measles before yours were taken down?

A. How long?

Q. About two weeks.

A. No, she came down on Thursday, and a week from the next Saturday.

Q. Nine days?

Mr. GORE: About four days, wasn't it? Thursday, Friday, Saturday, three days, seven days in the week.

Mr. STEWART: Figure it out as you please; we won't argue it now.

KALAMAZOO, MICH., FRIDAY, A. M., *May* 26, '98.

Continuation of the cross-examination of Mrs. HATTIE MCMICHAEL by Mr. STEWART:

A week from the next Saturday is when my children were
77 taken down. I could not tell how long it was prior to the 18th day of April, 1898, when I left the house in which Mrs. Fye lived. I have no idea.

Q. Well, if you left the house on the 16th or 18th day of April, this is the 26th of May, it would only be one month and eight days, would it, since you left there?

A. Something of that kind.

Q. Can't you remember with any more certainty with reference to the time you left that house, with reference to your children having the measles, than you have told?

A. I could tell but about a week before I moved.

Q. They were out about a week?

A. Yes, or a little over.

Q. Then how long were they sick with the measles?

A. Well, they were sick in the house I should judge about a week or ten days before they went out.

Q. A week or ten days?

A. Yes, sir.

Q. Then from the time they were taken sick until the time they went out, ten days would have elapsed, would it?

A. Yes, sir.

Q. And it was a week after the elapse of that ten days before you moved. Is that right?

A. Something of that kind.

Q. And your children were not taken down until a week and a half nearly after Mrs. Fye's child was taken down?

A. A week and one day, or two days.

Q. A week and one day from Thursday until a week from the following Saturday, do you call a week and one day?

A. I said about ten days after Ruth came down.

78 Q. So then we have a week from the following Saturday from the time Ruth was taken down, and ten days added to that, and a week added to those ten days before you left the house. Is that correct?

A. Yes, I went to live in the same house Mr. Fye lived in in September, 1897. Our apartments opened into one another. The two doors were not locked. I had been in the Fye part of the house on the 16th in the evening prior to the visit of the girls from Mr. Chapin's house. I left there to go to my own part of the house about half past seven. At that time the girls were not there. I had been in Mr. Fye's rooms half an hour, maybe twenty minutes, something like that. The child Ruth was there. I had no beer there that night before I left. I don't know as I drank a glass of beer in the house in my life. I did not know they kept it. I had been to bed before I was called maybe ten minutes. No, it was longer than that, because I was there—yes, forty minutes. I re-

tired about ten minutes to eight. I heard the girls when they came. They came about five minutes before I went to bed. They were there about thirty or thirty-five minutes before I was called. I did not hear the dog come into the house, when he came. When I first came into the room after I was awakened and got out of bed the child was in her mother's arms. Dr. Baldwin came in about fifteen or twenty minutes. I told him how freely and copiously the blood had flown from the wound. The doctor went away and came back with his nurse and went to work at the child sewing, attending to her wound, and the girls were in the room there talking; and there was a gentleman in there; Mr. Berge also was there and his little boy came there and they was talking in regard—about not minding—about killing the dog, and that Mr. Chapin was the—
(interruption). Well, that was all, only just that they were
79 walking the floor wringing their hands and crying. I was there when the doctor left that evening. He came back again the next morning, I think, about eight o'clock. I was in the room when he came. I don't know when he came again. I was there at his frequent visits along during that period of time. I was in and out sometimes when he came in; why, I would go into my room; the doors were opened. I was there more or less all the while the doctor was there. It was Dr. Baldwin all the while. I was there when the photograph was taken of the child. I didn't help to put the child in position for that photograph. These marks on the cheek represent bruises. Nothing was put on the cheek at the time the photograph was taken. No iodine or painting. At the time this photograph was taken, Mr. and Mrs. Fye and the gentleman that took it, Mr. Durham and myself were there. No one else. Seven or eight days after the injury happened this photograph was taken.

Ruth remained abed about three weeks; that is, she was kept in the cab and in bed to-. When she got up, they just dressed her and she laid around then for a week or so; I don't remember; that is, she didn't care to play very much, or run about the house or anything like that. Once in a while Ruth would go over to Mrs. Moore's and play with her little girl; not very often. That was before and after she had got up so as to be around. During the mother's absence in the daytime, Ruth was mostly with myself; once in a while she would want to go over and see Laura Belle, in the afternoon; I guess she was over there twice that I know of. She never went across the street to the other neighbors alone during
the daytime, after the injury. I was not always home; once
80 in a great while I went downtown in the morning, but I was always home in the afternoon, because she staid with me a good deal. I was absent some of the time when Mrs. Fye was absent. The children were not then left alone; they were left with my mother over to my house. My mother did not live with me; she came over and staid with them while I would go away. My mother lived probably two blocks from me, and every time I went out I sent for her to come. That was true, before the 16th of December, as well as after.

The communication between my bed-room and this room where Mrs. Fye and Ruth slept, was one door in the partition that divided the two rooms. This door was closed at night. I heard the child talking in the night. The first talking of that kind that I heard from the child at night, commenced the night of the accident. I could not tell what time of night it occurred. She continued it right along most every night that I would hear her; most every night. I couldn't tell you what part of the night. I didn't get up to see what time it was. There was no other place in the house that I could have changed my bed to. This kept up, well, she continued right away, of course from the night mostly after the dog had bit her; then after she commenced to get better she didn't do it so often. I didn't hear her after that. It did not disappear entirely. The night before I left she woke up screaming. That was Sunday night, the night before I moved away. That would be the 17th of April.

Q. And that was within a day then following, or it was the next day after she had the second spasm that you talked about?

A. It was on Saturday night that she waked up and screamed.

81 Yes, sir. She had the measels on Saturday or had the spasm on Saturday slightly, and Sunday night following, she waked up screaming. She asked her mother to take the dog and put it out. I couldn't tell you what time in the night it was. I retired that night about half past eight, and had been asleep and was awaked out of my sleep by the noise. I did not get up that night, and didn't go into the room to see what the matter was. I paid no attention to this spasm. I knew if she was very serious her mother would call me, if there was anything the matter with her. There was an arrangement between the mother and me, that she would call me if she wanted me. That *that* was a prearranged matter. I never went in except I was called. Only when I would happen in there. She would always come and call me if she thought there was anything the matter with the child. I did not help nurse the child through the measles. I paid no attention to that particular sickness, only I was in and out and gave her the medicine once in a while. I gave her no other attention. Her mother would be trying to give it to her, and she disliked medicine and she would take it better from me than she would from her mother. Dr. Smith was there once, I think. I was there when Ruth was first down with the measles. I couldn't tell the day of the month, but it was on Thursday. She had symptoms before Thursday of her coming down with the measles. She complained of her head aching, and being tired, Tuesday and Wednesday before that, and Thursday morning she was broke out. I do not know how long it takes as a rule for a person to be taken down with the measles. She went to bed Thursday morning, and remained in bed until the next Tuesday or Wednesday morning; she got up: I will not say for certain. Dr. Smith first came Thursday morning. So

82 far as I know myself, the mother took care of the child through this fit of measles. I could not give you the exact time when the child first went out doors after she had the

measles, because I don't know. I could not tell whether it was one or two weeks or three weeks before the child went out; she might have went out on the front there, for all I know. I didn't keep track of her after that. I was home on the 14th day of April, just prior to the time the child had the spasm that I testified about yesterday, in my own part of the house. The first information I had received that the child was in a spasm, Mr. Fye came and told me, and I went in the room. I was in there all day; I had just gone up to a little grocer's there after some bread and came back and he told me, he came and told me that Ruth had just had a spasm. I staid there maybe, well, five or six minutes up to the grocer's, talking, and when I came back into the house the child was out of the spasm. I hadn't seen her maybe for an hour or an hour and a half before that time. She was lying on the lounge when I seen her first. Her eyes were open. She was just lying there looking around; lying there in apparently a natural condition. I don't know just exactly how long I remained there, maybe fifteen or twenty minutes. The child remained on the couch all the time. I first see the child up and around after that on its feet. Let's see, the next day, I think, in the afternoon. I don't know who they sent for that spasm, but Dr. Baldwin came. I was there when he came. He gave the child medicine. I did not say anything to him about that. Dr. Baldwin took the temperature of the child with a little tube that he put into her mouth. I did not observe the degree of temperature that the thermometer registered. I did not say that the temperature of the child ran up to 106. I didn't say
83 anything in regard to the temperature. I did not tell Dr. McGugan the day before yesterday that the temperature of the child was over 106. I don't know Dr. McGugan. I did not tell it to anybody. I did not tell it before Dr. McGugan, this gentleman, Dr. Belknap of Niles and yourself, at the Kalamazoo house the day before yesterday in the afternoon.

Q. You are as positive about that as you are about anything else you have testified to here today, I suppose?

A. I know I didn't tell that. All I know about the temperature of the child is what the doctor then and there said. I made no observation myself. This was the same Dr. Baldwin who had attended the child during the injuries. The doctor had no difficulty in getting the tube in the child's mouth. The child did not eat anything that day that I know of. I didn't see as it did. The next day would be the 15th. I did not say that I saw the child out in the afternoon of that day. I said that I didn't see her up and around playing.

Q. Well, let us know then when did you first see the child after the doctor was there and it had come out of the first spasm?

A. I was in there three or four times that afternoon; I was also in there next morning, but the child was not up.

Q. In the same place?

A. No, sir; she was in bed.

Q. And she was not up until the afternoon of the 15th?

A. No, sir; she didn't get up and dressed until in the afternoon.

Q. Now, how late in the afternoon of the 15th did you see her?

84 A. About three o'clock. That was the last that I seen her. Have seen her in the morning several times.

Q. I say the last time in that afternoon?

A. Oh, I was in there in the evening as late as eight o'clock.

Q. Was the child up or in bed?

A. She was in bed.

Q. How early the next morning of the 16th did you get in there?

A. Oh, I don't remember.

Q. You don't remember?

A. No.

Q. Do you remember what day of the week the 16th came on?

A. It came on Saturday.

Q. That you are sure of?

A. Yes, sir.

Q. At what time in the day of the 16th was it that the child made manifestations of these spasms again?

A. In the afternoon.

Q. How late in the afternoon?

A. In the neighborhood of three o'clock.

Q. About three?

A. Yes.

Q. And were you there when she was taken?

A. No.

Q. How do you know then?

A. I was in there when the child was sleeping, and her mother called me a little after three, and I happened in there a little after three when she was——

Q. (Interrupting.) Let's wait a moment and see. You say you were not there when the child was taken with the spasm?

A. No.

Q. And when you went in there the child was asleep?

A. Yes.

Q. And the mother told you that the child had had another spasm?

A. No; she didn't tell me; the child had not had the spasm then.

85 Q. Oh, the child had not had the spasm?

A. No, I happened in there——

Q. (Interrupting.) Wait a moment, now. Then at this time you were in there on the 16th in the afternoon about three o'clock the child was lying down a sleeping; had not had a spasm. Is that it?

A. Yes; she was in her mother's arms, yet she had not laid her down.

Q. And were you there when the spasm came on?

A. No, I was not.

Q. Well, were you there after the spasm had taken place?

A. I went in there when I heard the child scream.

Q. You heard the child screaming?

A. Yes, sir.

Q. Now, after you had gone out do you remember the child screaming?

A. I don't know. I could not tell just exactly the time, maybe it was an hour.

Q. What did the child scream?

A. She imagined that there was——

Q. No, I don't want to know what she imagined, I want to know what she said.

A. She told her mother to put the dogs out.

Q. That was the talk, was it?

A. Yes, sir.

Q. What else did she say?

A. That was the only thing in regard to the dog.

Q. How frequently did that happen?

A. She would say that just as fast as she could repeat it.

Q. Did you then go into the room?

A. Why, I was in there.

Q. I thought you said you were in your own room when you heard this screaming?

A. I said that I was in the room—I went in when I heard the child screaming.

86 Q. Well, did she continue to scream?

A. She did for a few minutes; yes.

Q. How many minutes?

A. I couldn't tell you; maybe four or five.

Q. And the screaming was to her mother to put the dog out?

A. Yes, sir.

Q. Did she say "dog" or "dogs"?

A. "Dogs," I think.

Q. That continued for four or five minutes?

A. Yes, sir.

Q. Then what happened?

A. Well, then her mother sat down and tried to comfort her, and she talked to her and told her that there was no dogs there, and things like that.

Q. What took place then?

A. We just sat there and talked to her; her mother gave her some medicine that Dr. Baldwin left. I couldn't tell you what it was.

Q. Dr. Baldwin had been there that day, then?

A. No.

Q. Or some medicine that he had left from the two days before?

A. Yes, sir.

Q. Now, where was the child when you left then after this screaming took place?

A. I didn't understand your question.

Q. Where was the child when you left the room?

A. In her mother's arms.

Q. Was she asleep?

A. No.

Q. Still awake?
A. Yes, sir.
Q. Did she froth at the mouth?
A. No, sir.
Q. Did she bleed at the mouth?
A. No, sir.

87 Q. Well, all there was of the spasm was the screaming of the child to her mother to put the dogs out, and her mother quieting, and no contractions of the muscles?

A. No.
Q. Nor twisting of the arms or limbs?
A. No, sir.
Q. Simply screaming and laying in her mother's arms.
A. Yes, sir.
Q. Now, is that what you call a spasm?
A. I don't know what you would call it.
Q. I want to know what you call it. You designated it as a spasm yesterday. I want to know if that is what you call a spasm.
A. I should call it a slight one then.
Q. Now, do you know what the child had been eating just prior to that time?
A. I do not.
Q. Was the doctor sent for then?
A. No, sir.
Q. And how long a time elapsed from the time you went in there when you heard the child screaming, and when you went out leaving the child in its mother's arms as you found her?
A. Oh, I may have staid in there an hour.
Q. The child was there in her mother's arms all the while?
A. Yes, sir.
Q. Then you left two days after that?
A. I did.
Q. Have you looked at a calendar since you left the stand yesterday?
A. No, sir; I have not.

HENRY W. FYE, being sworn as a witness on behalf of the plaintiff, testified as follows:

Direct examination by Mr. GORE:

88 My full name is Henry W. Fye. I am 48 years old, if I live to see the 7th day of next March. Have lived in Niles over thirty years. Hannah Fye, who testified, is my wife, and Ruth Fye, this child, is my daughter. I live on Oak lane, corner of 9th and Oak lane in Niles. Henry Moore lives immediately west from me, and my house faces the north. There is a fence on the back part, half fence, on the front part there is no fence. There is a street on the east of us, then Mr. Frank Moore's property is on the other side of the street; the railroad cuts me and Mr. Moore. The railroad is on the east of me.

I know the defendant, Charles A. Chapin. I know where he

resides in Niles. I should judge my premises are about seven blocks from his. I should call it in round-about way, half a mile. I have railroaded pretty near all my life until the last five or six years. I was disabled on the 21st day of July last, 1897.

Q. What was the injury?
A. I was working——

Mr. STEWART (interrupting): I object to that as irrelevant and immaterial.
Mr. GORE: It is only preliminary.
The COURT: I think it may be shown. He may answer.

A. I was working for the Elkhart Board and Paper Company, of Elkhart, Indiana——

Mr. GORE: Your honor, the dog is here and we would like to call a witness and have Mr. Fye step aside for the present.
The COURT: You may do so.

HOMER CHAPIN, being sworn as a witness on behalf of the plaintiff, testified as follows:

89 Direct examination by Mr. GORE:

My full name is Homer Collidge Chapin. I am a son of Charles Chapin, the defendant, and am 23 years of age. I am residing in my father's family. That dog's name is "Duke;" he belongs to my father. We have owned him six years.
Q. Your father, that is, he has owned him during those six years?
A. He has; yes, sir; he first got him six years ago.

(The dog in question was present during the examination of witness.)

No cross-examination.

HENRY W. FYE, being recalled, his examination continued by Mr. Gore:

Q. You were about to state what the injury was from which you were suffering on December 16th, 1897.
A. I broke my arm in two places, above the elbow and below the elbow; the elbow dislocated and gangrene came in and they cut my arm open down to there (indicating).
Q. Just tell the jury about your injury.

Mr. STEWART: I object to this as irrelevant and immaterial.
Mr. GORE: This is merely the question, your honor, that is coming in:

Q. Were you suffering from the injury on December 16, 1897?
A. Yes, sir; I was.
Q. In what condition was your arm at that time?
A. My arm was right here (illustrating).

Q. Were you carrying it in a sling?

A. Yes, sir.

90 Q. Still being treated, I suppose?

A. Yes, sir.

I know this dog Duke very well, to my sorrow. I saw him in the evening of December 16th, 1897, in my house. I should judge it was eight o'clock or a little after; somewhere along there. I didn't put the time down exactly. I first see him when he came in my door. There was a couple of young ladies came with him. It was the first time I ever saw either of them, and the last time I ever saw them; they gave their names as Effie Stevenson and Alice Harcourt—some such names as that. I knew at that time whose dog that was. I supposed it was Mr. Chapin's. Before that I had seen the dog at Mr. Chapin's. My wife opened the door to admit these ladies and the dog.

Q. Tell what occurred when she opened the door.

A. Why, I was sitting—I was getting ready to go to bed; I went to bed very early, my arm pained me so much. I was sitting, pulling off my shoes; I had one shoe off, and there was a rap on the door; she said, "Go to the door." I said "I have got my shoes pretty near off," so she went and opened the door; as she opened the door this big dog busted right in the first thing; she stopped and looked at it, at me to see the dog in the house; so they went in the sitting-room, I stepped to the door, I says, "Ladies I had just as leave have a cow or a horse in my house as this dog." There was no reply to it. The ladies were then seated in the sitting-room. One was sitting on the north side of the room and one on the west side, and my wife sat on the south side, and I sat on the east side. The dining-room from the sitting-room is east. My child Ruth was there at that time.

91 When they came in and sat down the child was with her mother; the dog would go off in this direction (indicating) from me; she would come around and get behind my chair; she didn't make up with the dog. And this Harcourt was rubbing the dog's head, and she wanted the child to come and pat him; get on the dog's back; I said, "No, I don't want her to get on the dog's back; he might bite her," says I, "It is a strange child," says I.

Q. Now, something was said about some beer being served. What was there about that and when did it happen?

A. Well, yes, sir, my wife was working to Mr. Chapin's, and she says, "Those girls like beer; I would like to treat them when they come." So she says, "You go and get a case of beer." I said, "Yes ma'am I will get you a case of beer;" she worked hard all the time—I didn't keep beer in my house all the time anyway—I went and got her a case of beer; that is, pint bottles.

Q. Now, had some of that been served at the time of the assault?

A. One bottle, I should judge, and one bottle set on the table.

Q. How large were those bottles?

A. They was pint bottles, about that high (indicating).

Q. About how long had these bottles been there when the assault occurred?

A. Not over fifteen or twenty minutes.

Q. Do you remember whether the baby had any of the beer?

A. I think her mother gave her a couple of sips out of her glass; she didn't like it at all, and she just gave her a couple of sips out of her glass, I think.

Q. She had no glass of her own?

A. No.

Q. From behind your chair, where did Ruth go?

92 A. She went from behind my chair, she went out into the dining-room; she went out and sat down right next to the door, faces north in the dining-room.

Q. Could you see any part of her at the time?

A. I could see her little feet, as she was sitting down.

Q. Was the dog—where was the dog when she went out?

A. The dog was on the opposite side of the house. He had went around the stove and all around the house, just the same as he did here—he takes a circle around the house, wanted to see what was in it I suppose, came betwixt me and the stove, appeared to stop inside of the dining-room door, and they was telling a story or something about Chicago, I was listening to it; I don't think he was out there over a minute and a half, and he had my child—I heard the scream too late to assist her, and he was making for her, and I kicked him in here (indicating), somewheres, I kicked him away and my wife took the child into the other room and he came for me, and I kicked him again.

Q. Well, then, what occurred. Tell what occurred immediately upon this assault; what was said and what was done by the parties present?

A. Everybody jumped up and of course all excited, she was nervous; in the other room, I didn't know what she was doing: I wanted to kill the dog. I tried to find something to kill him, and these girls grabbed me, they said "Stop, now stop right here; Chapin is rich, make him "——

Mr. STEWART (interrupting): Hold on.

Q. Don't tell that; tell any exclamations that were made.

Mr. GORE: I don't know but that is proper, your honor.

The COURT: No, I do not think it would be. You had better leave it out.

Q. Well, any exclamations that were made about the in-

93 jury or assault, you may state.

A. Why, the girls was telling about one wanted the dog, and one said, "You hadn't ought to bring him; hadn't ought to bring him at all." She says—this Chapin girl, I don't know the Chapin children at all, but this one girl told them to take it for protection.

Q. Was there anything said about the injury to the child at that time?

A. Why, they said it was a bad injury—a bad bite.

Q. Well what did you next do?

A. What did I next do?

Q. What condition was the child in as soon as you kicked the dog out?

A. Well, sir, the child was sitting there with its little head bent over that way, and a stream of blood flowing right against the wall. This scalp was all torn back of what I supposed was a couple of arteries. The blood is on the walls today.

Q. Where was the dog with reference to the child when you got there?

A. He was right over the child. I remained about the premises before I went for a doctor, four or five minutes.

My wife had the child in her arms carrying her around all this time. Then I ran out and telephoned for a doctor. I saw the child after she was bitten, when I saw the blood spurt on the wall. I saw the injury again, before I went; while she was in her mother's arms; her appearance then was, you could not tell whether she was a child or what she was in the face; blood all over her face. At that time you could not discern wounds on her face; no, not for the blood.

I went to the telegraph—or telephone for Dr. Smith; he was always our family physician, but Dr. Baldwin was in part-
94 ners, and I went to his house. I told him to send me a doctor from the hospital, so Dr. Baldwin came. When he came up he didn't have anything with him; and he came in and he looked at it and said, "Why, if you had told me how bad it was, it would have saved me a trip to the hospital. I have got to get my nurse and instruments." He said, "That is a very bad gash; it has got to be sewed up." There was something said about the treatment they were giving the child. He told them to keep hot-water cloths on her until he came back, and that was done.

The condition of the child from the time I returned from summoning the physician until the doctor returned with his nurse and instruments, was, she was crying—weak—she was awful weak, and still bleeding. From the time the dog made the assault, until the doctor and the nurse got there, I should judge it was all of fifteen or twenty minutes.

The doctor went and tried to get the child to come to him, and she was afraid of him, first, as she was of the dog; so after a little while they got her so that he got chloroform to her nose; then he chloroformed her and they undressed her and done up the wound. I think there was fourteen stitches in the child's head.

The child was confined to her bed, and the baby-cab I should think about four weeks—three or four weeks. During the first part of that time, the condition of her face was, she was cut here with a tooth, somewhere right in there, and the tooth cut up through here.

Before that assault I never had a doctor in the house, nor since she has been born that I can recollect. She had been a healthy

child. That small knot on the lower lid of the right eye
95 comes from that scratch on the eye. It was not there before the assault. There was no scar on the child whatever—nowhere.

Q. Well, now during the first three weeks of her illness, what was her condition?

A. Her bite, you mean?

Q. Yes, her bite and her health, and her nervous condition?

A. Oh, she ain't the same child at all; she was all overcome; she would not—well, in bed, she will turn from one end of the bed to the other, before she will get to sleep—roll.

Q. He does not grasp the question. I mean to ask you, state if any suffering that she endured.

A. Yes, sir; she complained of her head; she could not lay on this side at all.

Q. How long was it since the injury that she complained of her head?

A. Well, she complained very much, right on from the bite.

Q. What kind of complaint did she make?

A. Why, she would complain of her head and her face; her face and her head would hurt her. She does yet, once in a while. I do not sleep in the same room with the child. I know something about these disturbances that have been testified to by my wife; the talking of the child. She would wake up in the night, she would scream out and holler at her mother; of course I slept up the stairs, but the doors was all open betwixt us; I slept right at the head of the stairs, and she would scream out and her mother would wake up and kind of pacify her down; she would want to get out; tell her mamma to turn up the lamp and put the dog out—put the dog out. Before she was injured she slept soundly and well. We could lay her down at half past seven or eight o'clock and the child never would wake up until the next morning.

96 Exhibit A is a correct photograph of the wound. That was taken, I should judge, somewheres six or seven days after the injury, along there. The portion of that wound that was the last to heal was right there (indicating) on the point of the V. With reference to this injured eye, there has been pus or matter formed there since the injury, right there; it didn't heal up for, I don't know how long, say two months. There was pus or matter there, and also in this eye. Her eye is mattered. You can see it every morning, now, when the child gets up. The matter is not of the same character in the other eye. This child has never been bitten by any other dog except this dog Duke.

I was at home on the 14th of April last. I remember it was the day the child had this spasm. She had no cold that I know of at that time, no more than she has now. She had recovered from the measles some over two weeks before she had that spasm. She was sick with the measles after they appeared on the skin, in bed three days. I had the doctor there and when she had the measles he pronounced it measles and told us to keep her warm; to keep her in the dark, so we did; we took care of her so he never came back any

more. He told me if anything happened, why, to let him know. I don't know if the child was up and around the house on the morning of the 14th day of April. She was not up when I went away from the house—I went downtown. I came back about noon, or a little after 12 o'clock.

Q. Had you been there before that morning, the morning that the child had this spasm?

A. I was home in the morning of the 14th.

Q. Were you there at the time she had this spasm? What time in the morning was that?

97 A. Oh, I should judge it was about between 11 and 12, somewheres along there.

Q. Well, do you know what the condition of the child was in the morning?

A. Well, sir; she was out in the yard, around the yard with me, walking around; she was always tagging me around; wherever I am, she is; she says, "Papa, let's go into the house; I am tired," she says, "I want to go in." I says, "Do you feel sick?" "No," she says, "I don't feel well"—so I went into the house, sat down on the doorstep and she kind of lopped there; she says, "Papa, will you go in with me and I will lay down and go to sleep?" So I went in with her; I picked her up to rock her and that didn't suit her, so she got off my lap and went and laid down on the lounge on her knees on the floor, and her head on the lounge, so I picked her up and laid her on the lounge; I laid down with her; I turned my back to her; she would always talk if I turned my face to her. I turned my back to her so she could go to sleep, so I turned my back and the child went to sleep. I got up and left her and I went outdoors. During that time she was with me in the yard I didn't notice anything wrong with her at all. With reference to being flushed I did not notice anything about it being red.

Q. Well, how long after you left her was it before the spasm came on?

A. Why, I went out to the back door; I was out in the yard, I don't know, maybe a minute or two, my wife hollored at me and I ran in there.

Q. What was her condition then when you got there?

A. Well, sir, her eyes was rolled back in her head, and she had her little hands up this way, (indicating).

Q. Muscles drawn?

A. Yes, was back that way.

98 Q. What was the condition of her eyes?

A. Her eyes was rolled back; I couldn't see nothing but the whites of them.

Q. Did you notice her pupils at any time during that time?

A. No, I didn't notice the pupils of her eyes.

Q. Did she froth at the mouth?

A. Yes, sir, there was froth coming out of the corners of her mouth when we stuck the fork in.

Q. Was there any blood at that time?

A. Yes, sir, she had bit her tongue I think a little on the front part.

Q. About how long was she in this spasm?

A. Oh, I should judge about ten or fifteen minutes.

Q. (Showing witness fork.) I hand you Exhibit B, the fork, and ask you if anything was done with that fork during this spasm and state what it was.

A. My wife had her finger in the child's mouth, and I told her, I says, "My gracious, she will bite your finger off." She told me to get a fork, so I ran to the knife box and I got her a fork, and that is the fork she stuck in there instead of her finger.

Q. I call your attention to the indentations in the metal of that fork handle.

A. Yes, sir.

Q. Do you know what caused those indentations?

A. That baby's teeth.

Q. How long did you say that she was in this spasm?

A. I should judge about ten or fifteen minutes; somewheres along there.

Q. What was the color and the appearance of the child when she was in this spasm?

A. My, I could not notice much difference in her color.

Q. What, when she was coming out of it?

A. I could not notice anything there.

99 Q. Well, was she pale or——

A. I think she looked a little pale, yes; of course I never saw her sick; she was not red; she might have been flushed up a little in the face, but I got water and bathed her. Her body was pale, there was no red there.

Q. Did you go for a doctor?

A. Yes, sir.

Q. How soon did you start for a doctor?

A. Just as quick as I got the fork for my wife.

After Recess.

Mr. GORE: Your honor, I desire to call another witness who is in a hurry.

The COURT: Very well.

Dr. O. A. LA CRONE, being sworn as a witness on behalf of the plaintiff, testified as follows:

Direct examination by Mr. GORE:

Q. What is your full name?

A. Oliver A. La Crone.

Q. What is your age?

A. 38.

Q. How long have you been practicing medicine?

A. Since 1886.

Q. In this city most of the time?

A. I have been here since 1890.

Q. Doctor, have you talked with the mother of this child, Ruth Fye?

A. Yes, sir.

Q. And heard from her the history of the case?

A. Yes, sir.

Q. Doctor, how would you define epilepsy?

Mr. BACON: We wish to renew our objection, that the declaration does not allege epilepsy; and we respectfully ask to object to
100 any evidence or any means used on the trial by which the jury can give damages for epilepsy, which is not alleged.

The COURT: I think the objection may be overruled.

Mr. STEWART: There is no further objection to this question, that there has been no basis for it. If it is to be based on what the mother stated outside of the court-room, there is no basis for this testimony to be given. If it is on the testimony of the case then I have no objection.

The COURT: This is, as I take it, a preliminary question. He may answer.

Mr. STEWART: Of course we insist upon the objection also made as to the testimony being competent under the declaration as framed.

The COURT: I think the objection may be overruled.

Mr. BACON: That may then be considered?

The COURT: Yes, all the testimony relating to that subject may be understood to be under your objection, and an exception to the ruling admitting it.

Q. Now, I will ask you—you may answer or give us in your own way a definition of epilepsy.

A. I should say it was a disease of the nervous system, characterized by attacks of unconsciousness, with or without convulsions.

Q. Is epilepsy produced by both physical and what are called psychosic or mental causes?

A. It may be.

Q. Now, what physical causes may produce the disease?

A. Oh, injuries of various kinds, particularly injuries to the head.

Q. How about irritation?

A. Well, it may be an exciting cause.

101 Q. Now, what mental causes may produce the disease?

A. Oh, violent,—I should say violent shock; things that would tend to weaken the resisting power.

Q. What would you say about a terrible fright as an inducing cause?

A. Why, I should think it might cause epileptic seizur-s.

Q. Which would be more likely to cause epileptic seizure, a terrible fright or physical injury?

A. I would expect a physical injury.

Q. Would not, Doctor, a physical injury and a terrible fright, acting upon the same individual at the same time be more likely to produce the disease than the action of just one cause alone?

A. I think so. I would think a shock to an infant, between four and five years *of years* of age would be more or less likely to develop the disease than such a shock upon an adult person, because the susceptibilities are greater, of course, in a child.

Q. Is the skull of a child more tender or harder than that of an adult?

A. Well, state that just as you mean it.

Q. Well, I want you to state the comparative texture, a child four or five years of age to that of an adult.

A. Well, of course it is thinner and the bones are not so hard.

Q. Well, which is not the most susceptible to physical injury?

Mr. STEWART: Now, I object to that as indefinite, "most susceptible to physical injury"—that would depend on whether or where the physical injury was going to be inflicted or not; it ain't like disease.

The COURT: I think the objection may be overruled.

102 Q. You may answer, Doctor. Which would be most susceptible, to physical injury, the skull of a child between four and five years of age and that of an adult person?

A. Well, while the child's skull is thinner, it is more elastic too.

Q. Now, what would be the effect of such a physical injury as this child received in connection with the shock and fright to her nervous system; would that tend or not to induce a disease?

A. Why, I should say it might tend to induce—you have reference to the disease of epilepsy, or neurosis in general?

Q. I am speaking of epilepsy in particular. You speak of "neurosis." What do you mean by the term "neurosis"?

A. Well, I mean a term that is used to designate functional nervous disorders without any strictural lesion having taken place to account for the cause.

Q. In general terms it is a nervous disorder?

A. Yes, sir.

Q. It is one form of nervous disorder. Is that right?

A. Yes; there may be several forms. Such a physical injury as this child received, accompanied by the terrible fright of the assault might tend to induce neurosis; depending upon its severity and the susceptibilities of the child. In other words, the physical injury of that character and fright if sufficient in force might induce neurosis.

Q. Does it not do so in many cases?

A. From my personal experience I could not answer. From the books, I should infer that it did. The books lay that down as doctrine. I said I had heard a history of this case. I also heard a statement of the spasm of the child, had on the 14th day of April, and the disturbance of the 16th. From the description of
103 the convulsions that I got from the mother I should think they were epileptic in form.

Q. Did you make any examination of the child to ascertain whether there was any abnormal condition of her nervous system?

A. I examined the eyes of the child, which I found normal. I was present when another examination was made.

Q. What did you discover in that?

A. Simply exaggerated reflexes; particularly the lower extremities.

Q. Now, explain that so the jury will understand what you mean by "exaggerated reflexes."

A. Oh, any irritable and exciting condition of the nervous system we find what is known as the "knee-jerk" is increased; by striking just below the knee we get an exaggerated reflex; that is, a reflex that is greater than that we get in normal conditions. Such a test was made on the child in my presence. And from the results of that test I saw that the reflex action was exaggerated.

Mr. GORE: I will make a statement that I deem to be strictly within the case.

Q. Doctor, supposing that on the 16th of December, 1897, an assault was made by a large dog upon a child—female child between four and five years of age, inflicting a wound with his teeth upon her scalp and face; that the child was confined some three weeks in bed, showing, during this time, great nervous depression and mental disturbance; that after three weeks and until April 14, and during the three weeks she had complained of a great deal of pain in her head and her head hurting her, and had at various times, particularly during the night-time, shown mental disturbances, com-
104 plaining or making exclamations that there was dogs about and similar statements, and supposing that along about the latter part of March, the child had the measles, which confined her to her bed for about three days; that she was kept in thereafter for a week or so, that on the 14th she had no cold, that her bowels were as usual; that on that morning she had a flushed face, more or less flushed, and that at about 11 o'clock that day she was put to sleep, after making complaints that she had not felt well, and shortly after she aroused in a spasm characterized by stiffening of the limbs, and arching of the back, throwing her head back and eyes staring, dilated pupils, frothing at the mouth, her teeth very firmly set, so much so as to make impressions on the metal of a fork, Exhibit B; that such spasm lasted from five, anywhere from five to fifteen minutes; and that after coming out of such spasm the child was white and pale and lived and remained in rather a lifeless condition for an hour or more. In connection with that, consider also that a sister of the mother had died with some lung affection; that there was nothing in the nature of epilepsy in the family of the mother nor the father. I ask you, under that state of facts, what in your opinion would be most likely of any symptom or any causes named in this statement to induce the epilepti-form convulsions of the 14th?

Mr. STEWART: Wait a moment. Counsel has referred——

The COURT (interrupting): We do not want any argument.

Mr. STEWART: I am not going to make an argument.

The COURT: If you have an objection, just state it.

105 Mr. STEWART: My objection is just this: I must state what counsel has left out. It is not a proper hypothetical question based upon the evidence in this case, and I object to it on the ground that the counsel has left out the testimony in the case that the child was sick with the measles a week at any rate, under her testimony, lacking one day; that there is also left out of the question the fact——

The COURT (interrupting): It is not necessary that you should state all that is left out; if you will state that "some parts of the testimony are left out" it will be sufficient for your objection.

Mr. STEWART: Very well; I will state what was left out one other thing—that one sister had died in the asylum, and three brothers and two sisters died with consumption and one blood cousin is now in the asylum insane today.

The COURT: The question as formed I think, states sufficient of the evidence to permit the answer. The objection may be overruled. He may answer.

Question read.

A. Did you state to me that she had never had convulsions before this injury or accident that happened to her on the 16th?

Q. Yes.

A. I should answer the question that the injury would be the most probable cause in my opinion.

Q. Doctor, I will ask you if the disease of epilepsy is usually one of long duration?

A. Yes.

Q. Is it regarded by the profession as a curable or incurable disease?

A. It is regarded as nearly incurable.

106 Q. Now, I will ask you whether or not hemorrhage, particularly hemorrhage of the brain or the head would be an inducing cause of epilepti-form convulsions?

A. I think it might.

Q. Now, Doctor, the skulls of human beings at least, have what is called an inner table, do they not?

A. Yes, sir.

Q. Does it sometimes occur that the inner table is fractured while the outer table is not fractured, by reason of personal injury?

A. Yes, sir.

Q. Might it be possible that the assault upon this child, while not fracturing the outer table, did injury or fracture the inner table?

A. You say, might it not be possible?

Q. Yes, might not that be possible?

A. Well, I suppose so, yes.

Q. Would, Doctor, the fracture of the inner table of the skull tend to induce epilepti-form convulsions?

A. If there was a thickening or indentation or anything that would be left as the result of the subsequent inflammation that would leave pressure on the brain, you might have an exciting cause.

Q. Now, Doctor, aside from any specific injury to the nervous

system inducing a nervous disease, or personal injury to the head, I ask you this question—what is the probable effect upon the nervous system of a child between four and five years of age, of an assault by a large dog, inflicting such injuries as were inflicted upon this child, considering the shock and fright to the nervous system as well as the physical injury itself?

Mr. STEWART: We object to that as irrelevant and immaterial, and no hypothesis upon which to base any such question.

The COURT: I think the fault in it is that part of the question, which states such injuries were inflicted upon this child—if
107 by that is meant the injuries stated in the former question then it would be proper; but otherwise I think it would not be.

Mr. GORE: Well, in order to avoid running over the history, your honor, I will add to the question—

Injured in the manner stated in the former question.

The COURT: I think it may be answered with that addition to the question.

Mr. STEWART: Same objection.

A. It would make the child more nervous; more irritable.

Q. State also in answer to that question, Doctor, the effect upon the development of the nervous system of the child.

A. It might partially arrest the development or——

Q. (Interrupting.) Do you mean to arrest it, or retard it?

A. Retard it is what I mean.

Cross-examination of Dr. LA CRONE by Mr. STEWART:

I live in Kalamazoo and have since 1890. I formerly lived in and begun my practice in Berrien county at Berrien Center. I am not in the general practice of medicine. I am following a special line, diseases of the ear, nose, eye and throat. My practice has been chiefly confined to that since 1890. I have been reasonably attentive to my business. During that period of time, my time has been almost wholly occupied in taking care of my patients upon those special diseases. I have not been in practice outside of that since 1890.

I graduated at the University of Michigan. I first went into general practice at Berrien Center and remained there in general practice three years. I then went to the university and was there during the time, 1889, 1890. I came from the university
108 here to Kalamazoo. My entire practice consists of what I had at Berrien Center, and my studies at the university and my practice in Kalamazoo. I came here in June, 1890, and opened my office on these special lines. I have had no great amount of experience with epileptic patients.

Q. All that you know then upon that subject substantially is what you have gleaned from the books?

A. Why, I have seen some cases. Not many; I don't know how many; but not many cases of epilepsy. I have been in no institution where that class of diseases is especially treated. I could not

give you the number of epileptic cases that I have had or seen. I don't remember of seeing more than one or two children with epilepsy. Let me think a moment—two I think. They were in my practice in Berrien Center. They were, oh, little fellows I should say from between four and six years of age. One was a boy and one was a girl. As to any difference in the nervous construction of the two sexes as to susceptibility to epilepsy, I believe the books say that the girls are more susceptible.

Q. That is what the books say. Do you know, Doctor, what caused epilepsy in the children that you have spoken of?

A. Why, I think I do.

Q. From what cause?

A. From intestinal fermentation I suppose. I would not say those cases were cases of epilepsy, but that the fit was epileptic form; that is seeing them having a subsequent fit, one of them had occasionally, but it didn't establish a habit. I thought it was due perhaps to intestinal fermentation. That was the temporary cause. A variety of causes produces epilepsy, such as injuries, accidents, intestinal fermentation; sometimes irritation constantly kept up

Irritation is the cause. Irritation may be caused by intestinal
109 fermentation, and irritations from pressure or from continued
irritation. One irritation is not a result.

Q. From a cause? I am getting at the cause of this irritation that produced the epilepsy or the fit as you call it?

A. I saw one cause in a boy with an inherited prepuce, a little boy in the university hospital.

Q. What with?

A. With an inherited prepuce; after he got over—was circumcised, he got over his epilepsy.

Q. Then after removing the cause, the effect is gone. Is that true?

A. Yes, sir.

Q. Then where that is the case the epilepsy comes, does it not form temporary or curable causes?

A. Yes. There is such a thing as heredity in epilepsy.

Q. As between the two, which is the most lasting or most difficult to contend with?

A. As between the two—state that a little further.

Q. As between heredity and that caused by just such things as you have named in that circumcision or intestinal fermentation.

A. Well, I think when the habit is once established, the epileptic habit once established, of course heredity would play an important factor in establishing it; but I think when the habit if once established, it is pretty likely to keep right on. However, there are cases in the books where a man has been kicked by a horse, and the skull trephined and the pressure taken off and the epilepsy quit.

Q. That is a removal of the cause, *was* it not?

A. Yes.

Q. But it is rather difficult to remove the heredity, isn't it?

A. You cannot remove that very well.

Q. Now, we will suppose, Doctor, that an aunt of this child
110 died in the asylum, insane; that she now—that her mother now has a blood cousin in the asylum insane, that three of the mother's brothers and two of her sisters died with consumption. What do you say as to whether or not there would be likely to be an hereditary tendency to epilepsy in this child?

A. Did this aunt have epilepsy?

Q. She was insane in the asylum, died there insane.

A. Did she have epileptic seizures?

Q. I cannot tell you that.

Mr. GORE: There is nothing in the testimony of that kind.

Mr. STEWART: There is in the testimony just what I have stated.

The COURT: That is what is in the question; but the Doctor asks another question; he will be answering it without the benefit of that question being answered.

Question read by the reporter.

A. Why, I don't know.

There is not much treatment to be done while the child is in the spasm. I should think the most the nurse would do would be to keep the child from biting its tongue in an epileptic fit. In the convulsive movement of the jaw, the tongue is likely to protrude between the teeth in the side. I never have seen it protrude out in the two cases that I saw.

Q. Do you profess to be up in epilepsy?

A. No, sir, I do not. I made an examination of this child, of the eyes of the child, and the injured portions of the head, the scars on the head. I simply looked at the scar on the head. I found no injury to the skull that I could state positively.

Q. And did you examine to find as to whether or not there was any injury to the inner table?

A. I didn't see any evidence of it. The wound looks to
111 me as though it had healed by granulation. I made an examination with reference to that little lump on the child's eye. It looked to me as though it was an inflam-atory exudate left there. An inflam-atory exudate is in healing the wound closes—had been thrown out their deposit. That will come away and can be done away with. It is not very difficult to dispose of it. I think I can do it in a very few minutes. When that was done it would leave a little scar, hardly noticeable with the winkers around the lid.

Q. Did you find there any evidence that it came from a wound?

A. Why, the only evidence was the scar.

Q. Will you show me that scar, please? Just let the child come over here; I want to see it with the naked eye.

A. I took her up in the dark room and threw a glim light across that and saw a scar right through there. You take this child in a dark room and throw a beam of light across this and you will see a little scar there. That lump don't look this morning as it did the day before yesterday. It looked almost like a bean, day before yesterday. It was a little more prominent yesterday. From where I am I can see a trifle of a scar. The pea-like lump that was on that lid yesterday or day before has partly disappeared.

I took the lump as being a little cystic tumor when I first saw it. There is no very serious matter about that.

Q. (Showing witness photograph.) Have you seen this photograph?

A. Yes.

Q. Will you state whether there is any indication on that photograph from the marks there that would show a wound on the eyelid right under that?

A. I didn't see any. I cannot see in this photograph any
112 wound there about the lower lid that would produce any such thing.

Q. We will suppose that that photograph was taken only seven days after the wound they claim was made.

A. Was it seven days?

Q. That is what the testimony shows. It is marked on the back December 23, and the accident happened December 16th. Now, then, if it was not there then at that time whatever, it must have come from some other cause, wasn't it?

Mr. KNAPPEN: That is a matter of argument.

The COURT: It seems to me so.

Mr. STEWART: He is an expert on eyes and ears, and he can tell us.

Mr. GORE: If the supposition is true then it does not need an expert.

Q. But whatever it is the affection is easily removed, isn't it, and can be healed?

A. Yes, sir. I should say fifteen or twenty dollars would be the cost of removing it at the outside.

Q. Now, Doctor, we will suppose that this child was injured on the 16th day of December, 1897, and showed no manifestations of injuries or disease than would ordinarily follow from scalp wound of the kind, and that during middle of March or the fore part of April the child had an attack of sickness from measles, and that on the 14th of April following it had a spasm whereby it frothed at the mouth and blood oozed through its teeth from biting the end of the tongue, as the testimony shows——

Mr. GORE: The edge.

Mr. STEWART: The end of the tongue, as the testimony shows; don't you testify——

113 Mr. GORE: Your honor, that is a mistake.

The COURT: I do not think that should be included "as the testimony shows." You may state your hypothesis on the facts as you assume them.

Q. Then I will state it as to without, what the testimony shows, and the biting of the end of the tongue——

The COURT: That, you have the right to do.

Q. (Continuing)—and that it had your convulsions, and it lasted about fifteen or twenty minutes, to which cause, if either, would you

attribute that convulsions to, to the scalp wound or the disease of the measles?

A. How long had she recovered from the measles?

Q. Anywhere from one to six days.

Mr. GORE: Two weeks or more is the testimony—two weeks or a month.

Mr. STEWART: It is very indefinite what the testimony was. My question is as I put it, from one to six days.

The COURT: He may answer.

Mr. GORE: And the jury will determine.

The COURT: Yes, it will be for the jury to determine whether it is correctly stated.

A. You say from which is the most likely cause?

Q. From which cause would this convulsion, whatever it was, be most likely to come?

A. Why, the fact from one to six days, I might consider the measles had something to do with it.

Q. Do convulsions ever come—convulsions or spasms ever come in connection with measles?

A. Yes, sir.

Q. That is quite a frequent occurrence, is it not, if the child is young especially?

A. I would not say it was frequent.

114 Q. Do they occur?

A. Yes, they occur.

Q. Doctor, if there was an injury to the inner table of the skull, wouldn't the nervous symptoms follow at once?

A. We would expect them to follow within a few minutes.

Q. Within when?

A. Within a few minutes, anyway.

Q. Would the spasm following an injury to the inner table or one side be bilateral or unilateral?

A. Likely to be unilateral.

Q. Why?

A. An injury to the cortical substance on the side.

Q. Now, let us know what you mean by "unilateral"?

A. One sided. The opposite side is where it would be felt. I never knew this child before I saw it here. I know nothing about the constitutional defects or heredity of the parents on either side, only what they told me in the examination. I was told in my examination yesterday or day before that the child had had measles; had gotten over the measles some two weeks or a month I think previous to this.

Q. Are you able to state, Doctor, under the testimony as it has been related to you in the hypothesis upon which your question has been put, that this convulsion was a natural result from that scalp wound on the head?

A. I said in my answer that it might be the case. The probable cause.

Q. What kind of a spasm would you call it?

A. I thought from the description it was epileptic in form. There might be spasms having another form, most of those are epileptic. That is all my answer. I am not sure that all spasms in children are considered epileptic, no matter what they are or what produced them.

115 Q. You have not had experience, or gone far enough into this special subject to post yourself thoroughly with reference to it at this time, have you?

A. To epilepsy, no sir.

Q. Doctor, is epilepsy a general result from a dog bite?

A. Oh, I would not say a general result; no, sir.

Q. And specially from a mere scalp wound?

A. I think I stated in my answer to that question, that it might be a probable result.

Q. A probable result?

A. Not general; I would not say a general.

Q. In other words, then, you would say it would be a possible result?

A. Yes, sir. The exciting causes in epilepsy are as I stated, injuries, irritation, and I can conceive that shock might be an exciting cause. But if there was no inherent constitutional epilepsy there, it might or might not occur from an exciting cause. It is a matter of opinion. I do not know of any case of epilepsy arising from such a wound to the flesh as this child is reputed to have received from that dog.

Q. Is epilepsy a general result from such injuries as this child has received?

A. I think not a general result, no.

Q. Which is the most probable, as to whether epilepsy would or would not follow from such a wound?

A. Oh, it might follow, or it might not follow.

Q. I say, which is the most probable, Doctor? You never knew of one before you say?

A. No.

Q. And you would not swear, would you, Doctor, that this spasm that that child had was produced by that wound?

A. Well most certainly not.

116 Redirect examination of Dr. La Crone:

Q. You stated it would be a probable result from that, Doctor?

A. No; I didn't state that. I think I stated it might be a probable result from this injury.

Q. Do I understand you to say that this spasm probably resulted from the fright and the shock and the assault?

A. No other causes existing that I could determine, why I naturally thought that might be the cause, and so I state.

Q. Do you mean to be understood as saying that that assault was probably the cause?

A. Why, yes.

Recross-examination:

Q. Now, Doctor, I understand you to say that in your first examination that you never knew another case where a spasm or epilepsy, or a spasm from a wound similar in character to this the child had—now which would be the most probably *with* such spasm or epilepsy would or would not follow such a wound?

A. Why, I should say in answer to that, "most probably" that it would not follow.

Q. Exactly so, and especially four months after the accident?

A. Well, as to the time I would not say.

Dr. A. W. CRANE, being sworn as a witness on behalf of the plaintiff, testified as follows:

Direct examination by Mr. GORE:

My full name is Augustus W. Crane. I am thirty years of age. I began the study of medicine in 1890, and have given—done nothing else since. I reside in the city. I heard Dr. La Crone define epilepsy. Epilepsy is a disease of the nervous system that is
117 characterized by attacks of unconsciousness and these may or may not be accompanied with convulsions according to the kind of epilepsy. There are three different kinds of epilepsy. Epilepsy may be produced by physical causes. Some of the physical causes which may produce epilepsy are from an injury on any part of the body, but especially on the head of course. We can have injuries from reflex irritations that would result from, for instance, a gastro-intestinal trouble or the contraction of a scar, where the scar would contain some nervines or the irritation of a foreign body lodged in the place somewhere, as for instance, in the case that I know of where there was a thorn imbedded in the hand; and then a very large proportion of causes, and this applises to the majority of cases of epilepsy, no external cause can be seen. Epilepsy may also be produced by what we may term mental causes.

Q. State some of those causes.

A. Mental causes most frequently as put down by writers on the *the* subject, is fright. But many strong mental impressions and overpowering mental impressions aside from that of joy may in a susceptible person give rise to epilepsy. Grief might result in epilepsy, if it were violent enough. As to anxiety, there would not be any sudden or intense paroxysm about anxiety, perhaps that would induce it; but still prolong the effect of nervous ailment in a susceptible person and it might bring on epilepsy. If from nervous depression, of course such cases as that would have to operate in susceptible cases where there was a bad heredity or something of that kind.

Q. You say, Doctor, epilepsy may be produced by injuries to the body, particularly injuries to the head; and you say that it may be caused by mental disturbance, particularly by fright. What
118 would the probability of epilepsy resulting from the coexistence upon the same individual of serious physical injury and

a terrible fright; would it be more likely to produce epilepsy th
if only one cause was in operation?

A. Well, the kind of epilepsy that results from an injury is like
to differ from that which would be produced by a sudden frigh
and while the child would have two chances instead of one of ha
ing epilepsy, I don't know that they would always work in comm
to produce an epilepsy.

Q. If the physical injury was such as greatly weakened t
patient, would that facilitate the development of epilepsy by th
concurring fright?

A. Why, yes. Anything that would weaken the patient's resi
ing power would of course help along the matter.

Q. In those cases, is hemorrhage a conspicuous accessory?

A. Hemorrhage is—bring on an anemia of the brain.

Hypothetical question previously asked, read to the witness
follows:

Doctor, supposing that on the 16th day of December, 1897,
assault was made by a large dog upon a child—female child betwe
four and five years of age, inflicting a wound with his teeth up
her scalp and face, and that the child was confined some three wee
in bed, showing during this time great nervous depression a
mental disturbance; that after three weeks and until April 14, a
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in her head, and her head hurting her, and had at various tim
particularly during the night-time, shown mental disturbanc
complaining or making exclamations that there were dogs abo
and similar statements; and supposing along about the lat
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to her bed for about three days; that she was kept in the
after for about a week or so; that on the 14th she had no cold, th
her bowels were as usual, that on that morning she had flush
face, more or less flushed, and that at about 11 o'clock that day s
was put to sleep, after making complaints that she had not felt w
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eyes staring, dilated pupils, frothing at the mouth; her teeth w
firmly set so much so as to make impressions on the metal of a fo
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child was white and pale and lived and remained in rather a li
less condition for an hour or more. In connection with that, co
sider also that a sister of the mother had died with some lung aff
tion; that there was nothing in the nature of epilepsy in the fam
of the mother nor the father. I ask you, under that state of fac
what in your opinion would be most likely of any symptoms
any causes named in this statement to induce the epileptiform co
vulsions of the 14th?

A. Why, according to the testimony that I have given in, th
fright and the hemorrhage would be sufficient causes for epilep
and then there is another part to that, as to whether I consi

these causes all operating to produce epilepsy. Is that the intention?

Q. Yes, whether they operated to produce it?

A. All I could say on that point is that the attack as described to me, made it an epileptiform or epilepti convulsion; and one of the reasons why I thought it was an epileptoid convulsion is not mentioned in that question.

Q. What is it, Doctor?

120 A. That is, there was the epileptic cry at the beginning of the seizure, a cry about half way between a groan and a scream, that shows that there was what we call an aura at the beginning of the attack. That is one of the most characteristic things about epilepsy. I could say then that it was an epileptoid convulsion; but whether or not it was true epilepsy, would have to rest until there was time for other attacks to come.

Q. Supposing, that the tendency or heredity insanity has been shown in some of the relatives of the child's mother, would that circumstance influence the development of epilepsy in the child, or tend to do so by reason of the physicial shock or fright?

A. Such a heredity is a bad one for the child, of course. It would go *would* to show that it had an instable nervous system that would be more susceptible to fright or to the cause of epilepsy. Such a child ought to be taken care of more exactingly than an ordinary child, because it is likely of course to suffer more harm by the nervous system.

Q. Would such a wound as this child received, physical shock and freight that it received, be more likely in that event to develop epilepsy?

A. Well, I should say it would be more likely to in a child with such a history. As to some of the effects of epilepsy on the system, there may be no effect at all, except the child is like at any time to go into epileptic seizure, maybe once a week or even every day in some cases; more than once a day in some cases, again it may not be more than once in a year and sometimes even at longer periods. But a child so effected is often prevented from engaging in the ordinary occupations of life, because such a seizure is like to come at

121 any time; some occupations, of course, it would be entirely excluded, but then the large majority of epileptics become mentally incompetent. In any retreat for epileptics or in any asylum there are always a good many cases of epileptics that have become insane or become mentally disqualified for active life.

Q. That brings out the mental effects or the effects upon the mind. What can you say of the physical effects, the health, the bodily strength of the patient?

A. Well, that might not be effected unless there is some injury at the time of the seizure. The man who is suffering from epilepsy is likely to fall and be injured in that way. In the large majority of cases epilepsy is an incurable affection. From the first epileptic seizure before the disease was fully developed, no time could be set. It would be an indeterminate time. It might go on for even days, or years afterwards.

The skull of the human being is what we call the inner table.

Q. Is it possible for a physical injury to be afflicted upon the head of a person like this child, and the inner table to be injured or fractured, and the outer table uninjured?

A. Yes, that is a state of affairs that has been demonstrated on post mortems in quite a number of cases.

Q. That has been demonstrated. What are some of the effects upon the brain by reason of the fracture of the internal table?

A. Of course there are pressure effects depending on whether the fracture occurs and what part of the brain is pressed upon. Pressure effects are those of complete or partial paralysis as a rule.

Q. Is such a fracture likely to develop hemorrhage?

A. It may.

Q. Now, in cases where hemorrhage is developed, may not
122 that hemorrhage ultimately result in epilepsy?

A. Yes, it may.

Q. And the time when it developed will be an indeterminate period?

A. Well, in case there was a hemorrhage from rupture or injured artery inside of the skull, there would be some immediate symptoms; there could be some immediate symptoms, although the epilepsy that would result from pressure there, and the atrophy of the brain underneath, might not come on for years; but still there would be some decided immediate symptoms.

Q. Would there be a tendency to a thickening of the bone by reason of such fracture?

A. Why, yes, there might be a fracture there; it is possible that a fracture may not produce some pressure, but simply a line of separation, and resulting from that irritation there could be a thickening of the *dura mater*, which is the lining of the inside of the skull, that might gradually produce some pressure.

Such wounds heal either by first intention, as we say in surgery, or by second intention, granulation; granulation would be by second intention. I mean by what I call "first intention," where the edges of the wound are coapted; that is, where they come together, and healing takes place without the formation of pus; the two stick, as it were, at once, and grow fast. The other is where there are some sup-uration, matter formed, and the edges are separated by what is called granulation tissues in between, joining the two cut edges. It may be quite wide apart or pretty close together, but there is always some granulation tissue in between, if there is sup-uration. First intention is the most desirable.

Such a wound as would be made by the biting of a
123 dog would be more likely to heal by granulation. The edges would more or less be torn and ragged. Where there has been a clean cut as with a knife, the edges can be brought together and will meet pretty well; but where the edges are torn it may be impossible to secure any such union. There is practically no tissue formed by the first-intention process; it is so small as not to enter in the discussion. Where the scar tissue forms, of course it is an

inferior grade of tissue. In other words, where it heals by first intention the original parts are joined.

Q. What appears to be the method in which the scar on this child was healed?

A. Well, it is easily to see by the width of the scar that it was by granulation—by second intention.

Q. Now, which method of healing is more likely to produce irritation?

A. Well, as I said earlier in the examination, that one of the causes of epilepsy was the inclusion in the scar of nerve filaments. In a case where there is a good deal of active tissue, scar tissue forming, there would be more of a chance to include—for nerves to become included in the scar.

Q. What you call the "active tissue," that is a part of the nerve tissue?

A. No. This scar tissue is formed by connective tissue; it is one kind of connective tissue. This granulated scar tissue, by compression and irritation of the nerve endings, could cause epilepsy or some form of neurosis. We know that, because in some of the rare cases where epilepsy has been cured, it has been by loosening up the scar. The scar tissue itself is red; the scar is itself red, but with weeks and months going on the scar becomes white, because it contracts; it becomes white because contraction squeezes
124 out the blood-vessels, and as that contraction comes on, of course irritation to the nerves would begin. That contraction also squeezes the nerves. That is what would give rise to the irritation. That is what I mean to say. The condition of nerve or brain irritation would be bound to be a later result, being postponed a number of weeks or months, any way so, or until the scar began to contract, and then would begin the irritation.

An epileptic convulsion does not sometimes accompany measles. An epileptic form will precede measles often; not only measles but various fevers may be ushered in by a convulsion in children.

Q. Is it more common that those convulsions you speak of are at the beginning of the attack of measles or at the end?

A. Such attacks, if it is connected with measles, would be in the beginning. When the child is recovering from measles, if we had a convulsion we would believe that we had a complication of some sort, such as meningitis, or some sup-urative process; for instance, in the middle ear, something of that kind. It is natural enough in the beginning where it does occur; but if it occurs at the end, why, it means that there is some serious complication as I say, for instance, where meningitis sets in.

Q. Have you known of any such conclusions succeeding a case of measles as they are described in the evidence here in this case?

A. Will you repeat that question?

Question read by the reporter.

A. Do you mean coming from an attack of measles?

Q. I mean coming after an attack of measles.

A. I never have, personally. I made an examination of
125 this child: There is at the present time signs in the child of instability in the nervous system. We find that the reflexes were markedly increased. A reflex is a resistance or involuntary response which the muscle will show; for instance, as the most prominent reflex of the body is the patella reflex, the knee-jerk, when you strike there, there will be a little resistance; that is the patella reflex. Where we have exag-erated reflex on striking that, there will be quite clear or conclusive evidence however, that the exag-eration is considerable, as the ability of the examiner to get it from tapping the rectus above here. When they get it there we feel that we have a decided increase of the reflexes. With this child such results can be obtained.

The exag-erated reflex indicates an instable condition in the spinal cord; not necessarily in the whole nervous system, but probably so.

Q. Now, Doctor, bearing in mind the hypothetical question read to you by the reporter, and your examination of this child, your knowledge of this spasm she had, in your judgment, was this spasm one of epileptic convulsions or otherwise?

A. Well, I have already said that I thought it was an epileptic form convulsion.

Q. We will change the question to read, "from the hypothetical question in the case and from your knowledge of the personal examination of the child; we then ask what cause most probably produced the epileptiform convulsions?

A. Well, I would like to answer that question in this way—that I think the attack of the dog upon this child and the injuries sustained would be sufficient to cause an epilepsy.

Q. Do you see any other cause for this epileptiform convulsion?

A. Well, you mean any other possible cause in the child?
126 Q. From the testimony and from your examination?

A. Well, from the testimony of the mother, that is, to me, why, there were some gastro-intestinal troubles which might or might not have produced those convulsions.

Cross-examination of Dr. CRANE by Mr. BACON:

Q. Please explain those troubles which might or might not cause those convulsions?

A. There was some history of diarrhea and intestinal fermentation as one of the common cause- of diarrhea, also a common cause of convulsions, why it might have had something to do with these convulsions.

The mother of the child stated there had been.

In the convulsions there was some diarrhea, of course fermentation must have preceded diarrhea.

Q. That state of bowels then might result in such convulsions?

A. Well, I would not say in just such convulsions. It could result in convulsions. Usually convulsions from intestinal fermentation is not accompanied by an aura; for instance, to a question

awhile ago, it is not usually accompanied by the biting of the tongue; neither is it when a child has convulsions from intestinal fermentation; the trouble is a pretty serious one, and the child does not recover with any rapidity, it is even near death, but if we thought that the convulsion were due entirely to intestinal fermentation why we would not expect just that kind of a convulsion.

Such convulsions as might have resulted from intestinal trouble are not accompanied by an aura.

I have a case under observation at the present time, but just what the cause is I have not determined. That is not the only one I have ever treated. Any convulsions
127 from gastro-intestinal troubles, any physician sees a large number of them; they are common enough in children; that is, to the number I have seen, I couldn't tell you. Of course, if a convulsion is due to gastro-intestinal irritation, why, the child may never have another; but if it is true epilepsy there are bound to be other attacks, sooner or later. The large majority of the convulsions children have under five years of age, are due to intestinal fermentation. I said before when a child from gastro-intestinal irritation has a convulsion, the case is very far along, pretty thoroughly poisoned, and a good many of them die; but where they are cured and get over the trouble, they may never have another again, they are not permanent. Convulsions are divided into two classes, epileptic and those that are not epileptic. Convulsions not epileptic are the largest class. And those are not permanent, not necessarily incurable, I think in the large majority of cases, they would be curable. Epileptic convulsions may be produced by fright; that is one cause. The authorities are, so far as I have consulted them, unanimous in the opinion that fright is one of the chief causes of epilepsy; that is one of the mental disturbance—two classes or causes. Those authorities agreed that fright is a cause of epilepsy, are Osler, the physician in charge of the John-Hopkins medical college, probably the foremost physician in the United States, has a statement something to that effect. Although he gives it as his opinion that too much stress has been laid on that point. The other authors have from the sentences of his evidently said so much about it that he thinks it has been overstated. Then Mr. Dana—Dr. Dana has a text book, used in the University of Michigan at present, makes the unqualified statement that especially fright produces epileptic convulsions, of all the mental
128 causes he thinks that is the chief and predominant factor.

I don't know of any other well-recognized authorities that are of the opposite opinion, that fright doesn't result in epilepsy. I have mentioned this professor from the Johns Hopkins and Dana; those are the two. Those are the only two that I have personally looked up at present, but I no doubt could find many more if it were necessary. Those are not the only two there are, physicians are as plentiful as lawyers.

Q. On that subject, now, then, another thing; suppose fright is taken—a case of fright we will say, great fright is the result, prob-

ably, natural result of epilepsy, which is the most probable that it will result or that it will not?

A. It would be somewhat according to the heredity of the child; if the child had a bad heredity, if there were signs of insanity in the family, an instable condition generally of the child, why, epilepsy would be a much more likely sequence; but if the child had a good, sound ancestry, it might withstand such assaults on its nervous system.

Q. Then do you mean to say fright in a child whose ancestry has been—has had some evil in it, such as has been described here, ordinary or severe fright, such as would be if bitten by a dog, would be more likely to result in epilepsy than not?

A. Well, I should think the majority of cases probably would escape and epilepsy would not result.

Q. You have examined this little child. Now, is this test that you mention the only abnormal condition you find in her?

A. Well, that is the only physical sign of an instable nervous system that I found.

Q. Otherwise than that test you found the nervous system normal, didn't you?

129 A. Well, I have not had an opportunity to make a satisfactory examination that way. Of course it could not be done by seeing the child for fifteen or twenty minutes or half an hour.

Q. As far as you did go, did you find anything abnormal besides that?

A. Not in the nervous system. In examining the skull, I found the scars there of course. That is not an injury to the skull; that is the flesh—the skin over the skull. I could not find any injury to the bone. I could not find that there was any depression that would indicate an injury to the skull itself. There was nothing abnormal in the color of the skull when I examined it. It looked healthy. I looked at this eye.

Q. Did you find any—you are familiar, I believe you are a specialist.

A. No, sir. I heard Dr. La Crone's testimony. I don't know that I agree with him. I didn't understand him to say that it might or it might not be temporary. I don't know. The name of that ailment in the eye as I understand the nature of it, would not have any special name; it would be a point of inflam-ation. I made an examination of this eye, but found no wound near the eye or any trace of a wound. Nothing more than that bunch. I don't know whether it has changed here within one day or not. (The doctor examines the child's eye.) I should think it might be removed all right; it would be a permanent cure. I judge so from what Dr. La Crone said.

Q. Now, if there is to be epilepsy, as a result of fright, would there be an adjournment of a month between the fright and the epileptic fit? Would that be a natural consequence?

A. Yes, that would be, or might be a perfectly natural consequence; it might be postponed even farther.

130 Q. When it is the result of a fright?

A. Yes, sir.

Q. Would there be any—would the fright pass away and leave any sign that could be seen and stay in the state of absence that way, for a month?

A. No, the child would show some shock of the nervous system, to be sure; but it might take considerable time. There might be considerable lapse of time between the reception of the injury and the development of the epilepsy.

Q. What would be the indications—that would naturally show that the fright was having bad effects, which might result in epilepsy?

A. Well, I don't know that anybody could predict—give a child any certain quantity of fright whether epilepsy would result or not.

Q. Suppose that this scar healed, that pus formation, except at the point of the "V," would that indicate that the healing was going on in a healthy manner?

A. Well, the healing by granulation is not necessarily an unhealthy process. It is not always accompanied by some pus formation, when it is healing by granulation. There might not be any pus. If this wound healed without any pus formation, except at what might be called the point of the "V" there, it would indicate that the doctor was careful in his dressing, and excluded all sup-urated bacteria, and that the wound was doing its best. At the point of the "V" would be the place where it would be more likely, where nature would find it more difficult to make the healing more rapidly, there would be less blood supplied at the point of the flap.

131 Suppose there is an injury to the skull or to some part of the body that might cause epilepsy, that effect might be adjourned a month or six weeks before it resulted in any epilepsy; it might, under certain conditions, be adjourned for months or years. I should think there would always be some lapse of time. I didn't talk with her very long; she seemed to be a bright child. I didn't see or notice any mental—ruin of the mental faculties of the child. I do not see any signs of it here in the room; she seems like a normally acting child. As to the digestive organs, and the ordinary health of the child—I see nothing abnormal in that.

Q. Do you see, in anything you see of that child today, do you see anything abnormal in its nervous system?

A. Well, I could not the other day either, so far as that is concerned; I cannot today, no, sir. If there is anything the matter with the child it is something that is invisible, and I have to take on the statement of this spasm, as it was. I see nothing else the matter with her. Of course, it would be impossible—the spasm is invisible, except when it is in progress. I saw nothing except the account of it. There would ordinarily be a trace of such convulsion left. I found no trace.

Mr. GORE: Would there be such a trace?

A. Not that I am aware of, except perhaps in the scar on the tongue.

(By request of Mr. Bacon, witness examines child's tongue.) I can find no trace of it. I cannot see any scar.

Q. Now, Doctor, you have just seen the child; isn't it unusually free from nervousness? Isn't that a fact?

A. Well, it does not show embarrassment. I can see no outward signs of anything abnormal in the child.

Q. Now, Doctor, do you mean from what you have observed
132 in this child, what you actually know, that it is your opinion if it was bitten by a dog it would be more than likely to result in epilepsy, than not to result in epilepsy?

A. Well, I could not answer that question; I don't know. I have seen this wound on the head—that place has plenty of nerves; the facial nerve sends branches into that region. It didn't injure any nerve trunk, but it necessarily cut a large number of nerve filaments. I would not say that was a part of the body, about where an injury would be little likely to affect any important nerve, as you could find. It cut some branches of the seventh facial nerve, the seventh cranial nerve. I think that supplies the part entirely.

Q. Wouldn't that be a slight—counted by any expert as a slight injury of a nerve?

A. Well, it would depend entirely of course as to whether any of the nerve ends were included in the scar, and would suffer compression; if they had, why, compression of the cranial nerves—any of the cranial nerves would be more likely to give rise to these reflexes, disturbances, than the ordinary spinal nerve. It would not have to be a nerve trunk, but some of the nerve filaments, to transmit the irritation, of course. So far as the cutting of the nerves is concerned, it would be a slight nervous injury; but if any of the nerve ends were included in the scar, it might—might not be a slight injury. I cannot tell by examining the scar, whether they were so included or not. I don't know of any serious nerve injury to that place in that wound, by examining the child. I don't find there, in examining the child's head, any evidence of a serious nerve injury.

As to measles, I would not expect a convulsion to follow them,
unless there was some complication, and complications often
133 happen. And if a convulsion came soon after an attack of measles, I would think some complication had happened. There are a great many such complications that may happen: but in case such complications had happened, for instance, meningitis, why, the child, probably, would not be with us today. I mentioned this statement—trouble to the intestines, where there was diarrhea. I also explained that in such a condition, the child's state was very serious, and a large majority of such patients die; that when the intestinal fermentation went on far enough so as to cause convulsions with the child, that as a rule the child was in a serious condition. I should say, a much more serious condition than attack of the measles. I do not say that intestinal trouble, is a very—or it can-

not be anything short of a serious thing. I say, if it had gone far enough to give rise to convulsions—then in the majority of cases it is a serious difficulty. As the second convulsion was described to me, I should not suppose it was a convulsion. It should be called a spasm, perhaps.

Q. Now, Doctor, take the—the convulsion or spasm whatever it is called, on the 14th of April, the dog bite on December 16th, please give a statement as near as you can, why you attributed that convulsion to the dog bite?

A. Well, but I didn't say that I did attribute it. The way I answered that question, was, that I would say that such an injury as the child received, and such a fright as she received, would be sufficient to cause epilepsy, in a susceptible child. So might a thousand other things. There are a good many causes of epilepsy. All I testify to is that it would be sufficient, and that many other things might be sufficient also. As a medical expert, I could not
134 attribute that convulsion to that dog bite. In other words, I couldn't say positively that one was the result of the other.

Q. Well, can you give your reasons for saying anything more that it would be sufficient to produce it—to get at it? You have given us reasons—give us reasons you have for attributing that convulsion or fit of April 14th, to the dog bite of December 16th, if you have any reasons?

A. But, I have not said that one was the result of the other. I do not think it would be a logical position to occupy, to say that one was necessarily the result of the other. In this particular child, the dog bite would seem to be a more satisfactory cause than any other.

Q. And so you say maybe thousand of other things may do it?

A. Yes, but I found other things did not do so in this case.

Q. You don't know whether they happened or not, did you?

A. Well, to my knowledge they didn't happen. There might be a great many other causes.

Q. And so you testify that measles would not be sufficient to do it?

A. Well, I say that convulsions coming after measles, not being due to measles it is, must be, very, very rare.

Q. Suppose this child had this bad heredity that has been spoken of, and then had the measles, then you will have a complication, wouldn't you?

A. Yes, but in that case I would have to say that the measles as a preceding cause would be insignificant compared with the fright, which also preceded the convulsions.

Q. A fright charged back a month and a half of that, would not be present then would it?

A. Well, it would be soon enough for convulsions, I think. Anybody would agree that the measles with a bad heredity would
135 cause epilepsy, would have no difficulty in saying that a fright, such as that child sustained would cause epilepsy. I should have to subscribe to the fright before I did the measles.

Q. What are your reasons for doing—so that you can state them? Min. 245.

A. Well, the measles, to my knowledge, never cause epilepsy, or from reading, so far as I know. I never have heard of a case of epilepsy that has been due to the measles. I don't know of any case of measles ever followed by convulsions, unless it is where meningitis is setting in, and meningitis convulsions are present. It is true that measles work a sort of an irritation, such an irritation or pain in the brain, and that measles may affect the brain and produce convulsion in that way. Meningitis is a curable disease, but it is a very serious one; and the child would be sick quite a little time from meningitis. I am a general practitioner. I don't call myself an expert. I have been in general practice less than four years. I graduated at the University of Michigan. I have been in business in Kalamazoo all that time.

Q. So you don't rely on your experience very extensively as to these matters, I take it in.

A. Well, I do to some extent. I happen to have had some very lucky experiences so far as acquiring knowledge about epilepsy at the time that I was in the university hospital at Ann Arbor; why, we had a case there that we could watch week after week in convulsions, from the beginning to the end. I would not say how many cases of epilepsy I have attended after I left the university—before I left the university I was over in Wisconsin at the time of the World's fair and took care of the practice of a physician there who wanted to visit the World's fair; he had an average-sized
136 practice, and there was a couple of epileptics in them. I had charge of those. They were adults. They were confirmed cases; of course the majority of cases begin in childhood and last through life. And then I have one case under observation at the present time, in a child seven years of age. And I saw one case in a child in Ann Arbor before I left college, in the hospital. So far as I can remember those four are the only cases that I personally attended; however, I visited Wayne County house not far from Detroit, where there are quite a number of insane, and the epileptic insane also. I visited there part of one day. There is a place here, the asylum, where there are a great many; I have taken the opportunity of going up there, but I have not studied up there especially.

Q. By injury to the head, do you mean the scalp or skull or the brain?

A. Well, I don't recall the question now where I made that statement. If I could have the question read to me, I could tell what I mean.

Q. No, I mean the question that says here—we are speaking of bodily injury. By injury to the head, do you mean the scalp, the skull, or the brain?

A. Well, by head injury as the cause of epilepsy, that would mean injury to the brain, result, of course, from a blow in the head, something of that sort. I have no evidence that the child has sustained a fracture to the skull.

Q. Do you find anything in the character of the scar or other objective signs of injury that would lead you to suspect them as being the cause of the spasm to the child?

A. Well, in this way; that it is a bright scar; there is a great deal of connective tissue on the scar; so far as any scar, provided there were nerve filaments in the scar, so far as any scar
137 could have caused epilepsy, it would be some such scar as that, where there was upon it connective tissues to contract. Epilepsy in a child might or might not begin with such a severe spasm as has been described. I don't know which is the most ordinary. I don't know of any such case as this as having been dependent upon fright; any such case of spasm only as I read of them. I don't personally know of any.

Q. From your standpoint as a scientific medical man, do you believe that mental causes, such as fright, are so potent as generally believed?

A. Well, I don't know just how generally believed it is.

Q. Is such a cause so potent as some physical disturbance associated with acute infectious disease?

A. Well, provided the acute infectious disease gives rise to a toxine that was capable of acting on the brain energetically enough to act on the brain, I should say no; but measles does not produce any such toxine.

Q. Do you consider the increase of the reflexes a conclusive sign of nervous disease? Does it not vary in various individuals?

A. It varies in various individuals. I have not said that increased reflexes was a positive sign of disease; but a sign of a nervous state, or state of the nervous system, I mean.

Q. That is common in people throughout, isn't it?

A. And I can further say that never in a nervous system that has a normal susceptibility, would we get a reflex from tapping the tendons of the rectus muscle as we got it in this child.

Q. Isn't it common for children that have the reflex action to live long like other people, be able to attend to business, to be in good health, to have that ordinary reflex action?

138 A. Well, so far as the reflex itself is concerned it would not interfere with life and happiness.

Q. Well, is it in anywise sure to result in any serious disease?

A. Well, it is a sign that is to be interpreted in conjunction with other clinical symptoms; for instance, we have the test of the spinal cord and the loss of the reflexes; we interpret that in conjunction with these other signs.

Q. And what you found there in this child do you testify that would indicate any serious ailment now existing?

A. You ask what I testify. I think I testified it indicated an instable condition of the nervous system.

Q. Do you testify that it proves any serious ailment now existing in the child?

A. No, sir.

Q. Do you testify that it proves any permanent injury to that child?

A. No, sir.

Q. You said that you knew of no case of epilepsy caused by measles. Do you know of any case of epilepsy certainly caused by fright?

A. Only excepting as I have read about them.

Dr. RUSH MCNAIR, being sworn as a witness on behalf of the plaintiff, testified as follows:

Direct examination by Mr. GORE:

My first name is Rush, and am 37 years of age. I am a practicing physician, and reside in this city. I have been practicing my profession eleven years. I am a graduate from the Chicago Medical College.

Epilepsy may be produced by physical causes. It may be produced by an injury, by irritation such as compression of nerve endings. It can be produced by poisons within the body, either
139 within the body, or taken into the body. It might be produced by hemorrhage. Epilepsy may also be caused by mental causes or disturbances. I would place first, a great fright; grief, anxiety prolonged—might cause it. I should say, that in cases of serious physical injury such as would greatly weaken the physical constitution, occurring at the same time with terrific fright, would, as concurring causes, be more likely to develop the disease, than the operation of one alone, because you would have two causes, either one of which might be sufficient. Those causes would be more likely to develop the disease in a child between four and five years of age than in an adult, for the reason that the nervous condition of a child is more susceptible to irritation of any kind; it is in a process of development, hence is more easily porturbed or put in a state of instability.

I have heard more or less of the history of this case of Ruth Fye. I have made an examination of the child. I examined that scar. I examined her eyelid.

Mr. GORE: Will the reporter please read the hypothetical question propounded to the other doctors.

Doctor, supposing that on the 16th day of December, 1897, an assault was made by a large dog upon a child—female child between four and five years of age, inflicting a wound with his teeth upon her scalp and face, and that the child was confined some three weeks in bed, showing during this time great nervous depression and mental disturbance; that after three weeks and until April 14, and during the three weeks she had complained of a great deal of pain in her head, and her head hurting her, and had at various times, particularly during the night-time, shown mental disturbances, complaining or making exclamations that there were dogs about and similar statements; and supposing that along
140 about the latter part of March the child had the measles which confined her to her bed for about three days; that she was kept in thereafter for about a week or so; that on the 14th she

had no cold, that her bowels were as usual, that on that morning she had flushed face, more or less flushed, and that at about 11 o'clock that day she was put to sleep, after making complaints that she had not felt well, and shortly after she aroused in a spasm characterized by stiffening of the limbs, and arching of the back, throwing her head back and eyes staring dilated pupils, frothing at the mouth; her teeth very firmly set so much so as to make impressions on the metal of a fork, Exhibit B. That such spasm lasted from five—anywhere from five to fifteen minutes; and that after coming out of such spasm the child was white and pale and livid, and remained in rather a lifeless condition for an hour or more. In connection with that, consider also that a sister of the mother had died with some lung affection; that there was nothing in the nature of epilepsy in the family of the mother nor the father. I ask you, under that state of facts, what in your opinion would be most likely of any symptoms or any causes named in this statement to induce the epileptiform convulsions of the 14th?

Q. (Continuing): The 14th of April, and I will add that the convulsions were introduced by a peculiar scream?

A. In my opinion, the fright and injury of the preceding December, would be the most probable cause.

Q. Are these symptoms described in the last question epileptic symptoms?

A. They are symptoms of epilepti-form seizure. A mental effect of epilepsy is to weaken the mental power; if the person continues to have epilepsy they would probably become insane, as to
141 physical effects. There would be a weakening of the general physical effect of the individual; he would not be so strong in his muscles; he could not do as much work; from a physical standpoint, the physical constitution would be weakened.

Q. Supposing, Doctor, that there was a hereditary tendancy shown in a sister or sisters of this child's mother; would that circumstance render more probable that epilepsy would be developed by the fright and injury, than without that circumstance?

A. It would have an influence, I think. The tendency would be to aid the development of the disease. I don't think there is any stated time required for the development, fully, of the disease of epilepsy. It might be a question of weeks or years. When well established, it is regarded as an incurable affection.

Q. Now, Doctor, in what ways—you have examined this wound here on the child's head. In what ways may wounds heal?

A. There are two methods; first designated as by first intention, where the edges of the wound fall closely together, and immediately grow together; second method, that the granulation, where for any reason the edges of the wound are not in opposition; the space between the edges of the wound fills in by tissue, it is called granulation tissue. The first method, that by first intention is most desirable. A wound made by the teeth of a dog, the bite of a dog, is more likely to require healing by the latter process, for the reason that the edges of the wound are torn, they are rough and bruised; the vitality is lowered. They cannot be brought into close opposi-

tion. The scar tissue formed by that process, may be good
142 tissues and may not. The scar on this child healed by granulation. The method of healing by granulation is most likely to produce the irritation. And irritation, I stated, to be one of the physical causes of epilepsy. This granulated scar tissue might by irritation produce such results. Where a wound heals by granulation, there is more or less contraction of the scar; and by that contracting process it would press upon or squeeze the little nerve endings, producing irritation of those nerves. That might, or might not be the result in this case. The condition of nerve or brain irritation, would not immediately follow the healing of the wound; it would be likely to develop later—by necessity develop later. Because this contraction or granulation period, is a little process that occurs after the chasm is filled up and bridged over; after that is accomplished, then the scar contracts as for instance in a burn—will draw the skin out of shape. There is in a skull what is called the inner table.

Q. May an injury to the skull, or fracture, injure that inner table, and the outer plate be uninjured?

A. It could not be entirely uninjured.

Q. May an injury—I will put it this way. May an injury to the outer table, fracture or injure the inner table, and the outer one recover from the injury and the inner table remain in an uninjured condition?

A. Yes, sir. Some of the results which might follow from the injured condition of that inner table, are a fracture of the inner table; there might be hemorrhage producing—which would produce pressure. By a fracture also, a sharp piece of bone might wound the covering of the brain and produce hemorrhage in the covering of the brain; and if there was a thickening, either of the bone tissue or of the covering of the brain, there would be constant pressure on the brain at that point. The formation of a clot
143 of that character or the continued pressure of the character I have de-cribed might produce epilepsy. Convulsions commonly occur with measles; and usually at the beginning of the attack when they do occur. I know of their—of such convulsions following in a case of measles that I have attended. Those that I have seen have been severe and protracted, and inaugurated an attack of meningitis. So that the patient would be some time in recovering from them. Those convulsions—epileptiform convulsions which succeed measles are very hazardous and dangerous. That is, as a result of measles, they are dangerous. Usually an epileptiform seizure which accompanies measles, would probably be but one attack and leave no ill results; it would simply be one of the symptoms of measles as it is of other acute diseases in children. If it followed measles it would indicate that it was a worse disorder—more cause for it; hence the seizure would be more severe; it would be longer and leave more ill results.

Q. Doctor, from your personal examination of this child, and from the facts stated in the hypothetical question put to you, what

causes, in your judgment, most probably induced the epileptiform convulsions of the child on the 14th of April?

A. From my examination and from the specifications contained in the question, I would say that the injury to the child was the most probable cause.

Q. Do you mean by the "injury," the bite of the dog?

A. Yes, sir, and the fright.

Q. And the fright?

A. Yes, sir.

144 Cross-examination of Dr. McNair by Mr. Stewart:

My practice of medicine has been confined to the city of Kalamazoo. I have been here about eleven years. My practice has been that of a general character. I have made no—paid no especial attention to any one line of diseases, more than another.

I never saw this child until this past week. I was called first to see it at the Kalamazoo house. The character of the examination I gave it, was a general examination of the physical condition, by asking the child a number of questions regarding its feeling; I examined the wound, inquired the history of the case, the history of its parents; I examined the muscular system and I examined the nervous system. I did not take off the clothes of the child at all. The father, mother and Mr. Gore were present. Dr. Crane and Dr. La Crone were also present. The mother, father, Mr. Gore and a lady friend. That was not the only examination I made. I examined the child since, in the court-house here. I made an examination then particular to a scar, and of the eye. The injured one; the right one. I can detect a little scar there. No other reason. The little protrusion, the bead, pea-like formation on the lid has nothing to do with it, in my opinion, it is the scar tissue. The little bead, or pea protrusion, the growth there, in my opinion was a scar. I have seen the child today. I cannot see but that it is as large today as it was the day before yesterday. I cannot see any difference. I cannot see any difference between the two examinations. On the upper lid there is a black spot underneath the skin also.

145 Q. (Showing witness photograph.) Now, will you look at that photograph, and can you tell me if you see anything on the photograph about the face that would produce the scar, that you say you saw on the eye?

A. Below the—on the lower lid above the eyelashes it appears to be black, on the photograph. It appears to come up to the eyelid, on the photograph. There are several black marks above the eye; there is one immediately beneath the eyelashes, one below the lid, and one on the cheek.

Q. Will you point out where that scar is on this child now, Doctor? You say you can find it; just let the child come here, please.

(The witness examines the child.)

A. This red spot here is a dark spot exactly above on the upper lid.

Q. Is that dark spot a scar, Doctor?

A. It is evidence of an injury, indicating an injury to have been done to the upper eyelid. If you will look close you will observe it. I think I see an injury on the upper lid in that photograph. I do not know the cause of it. No, sir; I could not. The scar from the—the suture having been several days, I think would appear in the photograph very much as though the stitch was still there. From that photograph, I should say the child has its eyes closed.

I have had cases in my practice where the convulsions or epileptic fit as it is called, was produced by injury; that I know myself. I saw a boy once with a thorn in the palm of his hand, which had remained there several years, which produced epilepsy for several years, which being removed, the epilepsy disappeared. In that case the direct cause of the epilepsy was the thorn in the hand. I recollect one case of the results of the burn to a hand where the scar tissue had contracted and drawn the hand out of shape;
146 the child had epilepsy and always complained of a bad feeling, beginning in the hand when the convulsion came on, which is fair to suppose was the cause of it. I was not present, nor called immediately after the thorn had penetrated the hand. The thorn had been in the hand, when I was called to visit the patient, seven or eight years. He was a boy then, about sixteen, I believe, when I was called. The child was said to have crawled through a hedge fence, and complained that he hurt himself; after that convulsions appeared, but it was not considered by those who had seen him that there was any connection between the going through the hedge fence and the beginning of the convulsions. I don't know how soon after he went through the hedge fence the convulsions began. Those convulsions, during the period of time, before the thorn was removed, had become daily or several times a day. They had continued from the time he had crawled through the hedge fence, I was advised some time after; I could not say how soon—or how long. I assisted in removing the thorn. The boy was taken home, and the report made afterwards that he never had but one slight seizure afterwards. His mental condition had become greatly depraved, and he took on a development afterwards. When the cause was removed, the boy became healthy and normal; got well right away. If in that boy's constitution there was a hereditary tendency to epilepsy, it would have been an influence against him.

The child that was burned was about eight years old, if I remember correctly, when the burn occurred. That burn was on the hand and wrist. The greater nerve centers would be more in the hand than in the head, and more in the wrist than in the scalp. I could not say how long after the burn in the hand and on the
147 wrist of the child I have mentioned, before the epilepsy appeared. The child had been suffering from that injury before I was called, two or three years. That child was not well the last I heard of it. It was a pretty severe burn. The only treatment in the case would be amputation of the arm, and the parents would not submit to it.

Aside from those two cases, I have seen epilepsy resulting from depressions of the skull. One case comes to my mind; it was received in a battle, being struck on the head with a gun stock. My recollection is, that epilepsy followed about ten or fifteen years afterwards. That was an adult.

Q. Now, I am speaking of children; what other children?

A. I don't recollect any other cases from injury. The scalp covering the skull is loose. I examined this wound or scar upon this child's head to ascertain as to whether or not there was adhesion to the skull over the scar, and I found it fairly movable. If the skull had been lascerated or injured as well as the scalp, the skull and scalp might or might not have been likely to have adheased together. From my examination as to whether or not the skull was injured at all, I could not see that it was injured. From the examination I made, I might not have been able to tell.

Q. If it had been to any considerable extent, you could, could you not?

A. No, sir. It might be a fracture there, and I not be able to detect it from examining through the scalp.

Q. Now, you have said something about the inner table of the skull; I take it—what is that inner table of the skull?

A. The skull is composed of an outer plate and an inner
148 plate—hard, bony material; between them is soft, bony material—cellular; it is full of little spaces; it is not dense like the outer and inner table. Then between the outer skull and the inner table there is a space all around the head that is filled with a glutin of soft material—the bone itself is not softer, but it is less dense in structure—full of little cells. Sometimes you can and sometimes you cannot tell from the indications of the outer structure of the skull, as to whether or not the inner table is affected. If there was a deep depression by examination externally you would conlude that the inner table was fractured.

Q. Doctor, we will suppose that there was no indentation at all in the outer skull, or bone, that the blow was not sufficient to do anything more than to go through the scalp; what do you say, as to whether or not it would be possible to create a fracture of the inner table under such conditions?

A. It might or it might not.

Q. Where the blow was only strong enough to cut the scalp, you could then say, leaving the outer wall of the skull intact, it might yet fracture the inner table?

A. If the blow was simply sufficient to go through the scalp, and there would be no force left beyond that, it could not produce any fracture. If there was, it might.

Q. Now, then, would it be possible to fracture the inner table of the skull without a blow, and just by scraping along the skull sufficient to cut it?

A. No, sir.

Q. That would be impossible. Then we will suppose that that takes a *tare* into the child's forehead at the apex of the skull, or of the wound there, the "V" point, and simply tore it back; what do

you say as to whether or not it would have been likely to
149 have affected or fractured the inner table of the skull, under such circumstances?

A. If the force was simply sufficient to cut through the scalp, and there would be no force left after that, there could be no further injury.

Q. And if there was no further injury of that kind, would it be possible for epileptic spasms to have followed from that injury to the brain?

A. If that injury was simply sufficient to go through the scalp, and leave no force beyond, it probably could not produce epilepsy by any internal cranial injury.

Q. It would have to come from other causes?

A. Yes, sir. I found no evidences of internal injury in my examination.

Q. So we will let that out of the case. If you had been called, Doctor, as the attending physician of this child, at the time the injury was received, what do you say, as to whether or not you would have then determined all these questions, as to whether or not there was a fracture of either the outer or inner skull?

A. I should have made an attempt to find out whether there was or not.

Q. You would have demonstrated to your own satisfaction, to the fullest extent, the extent of the injury, would you not?

A. So far as I could at that time.

Q. And if there had been a blow there sufficient to have fractured either the outer or the inner table, would it not have been followed by some sign or other of physical distress by the child?

A. It might, or might not.

Q. And, furthermore, if such a thing took place, and a lawsuit followed, you would expect to be called to testify with reference to what you found in that case, would you not?

A. I should have fears of it; yes, sir.

150 Q. Can you get, or are you satisfied that you could get an accurate diagnosis of the condition of the child's head, and the wound that it received from that injury, outside of a competent doctor who attended it at that time?

A. Please repeat that question.

Question read by the reporter.

A. You might not be able to get all the conditions.

Q. And before you would pass an absolute conclusion as to the results that followed from that injury, you would want to know pretty accurately and carefully all the conditions, would you not?

A. No, I don't know as I would.

Q. You don't think you would. You would be willing to guess?

A. I would be willing, if some brain injury occurred—some disease of the brain afterwards, I might not have been able to have found from the doctor in attendance, that he discovered any injury to the inner table at that time.

Q. Doctor, from your examination of this child, and from what

you have seen of the child during this trial, can you discover any affection of either the outer or inner table, or an affection of the brain of the child?

A. I found no such thing.

Q. Is it not true that you find the child normal in its nervous and physical construction?

A. Nearly so; not——

Q. In what respect is it not normal?

A. The reflexes of the child are generally exaggerated hypersensitive.

Witness testified as to the reflexes substantially the same as Dr. Crane.

I examined the scar pretty thoroughly with the naked eye. A glass is of no assistance in such examinations. I would not
151 expect to learn anything more from a glass than I would from the eye. I don't know whether or not there is any irritation coming from the scar at present, which might come with spasms. Granting there was such a condition, it might be removed by an operation; perhaps it might. If I concluded that there was irritation from the scar itself, the removal of the scar would be the only remedy I should consider locally. From what I have discovered and seen and examined, there is no indication now in the child that any such thing as that is necessary. I have seen none. The scar tissue is not entirely recovered yet, the lower scar is still red, and still contracting, and will continue to be for a while; there is a little loss of tissue at the apex of the angle, some loss of muscular or other tissue beneath the skin; whether or not that would produce any trouble, time alone can tell. If there was hereditary disease in the child, that could not be removed.

Q. Now, we will suppose, Doctor, that this child's aunt, or its mother's sister, died in the asylum, insane; that she now has a blood cousin in the asylum, insane; that three of her brothers, and two of her sisters, have died with the consumption. What do you say as to whether or not, under such a physical condition of the relatives, the blood relatives of this child, there would be likely to be a taint of hereditary epilepsy in the child or not?

A. There might be such a tendency to such a taint.

Q. Such a condition of health in relatives that near would indicate, would it not, that there was hereditary disease in the constitutional make-up of the family?

A. Yes, sir.

Q. Now, we will suppose for instance, that this child has been injured on the 16th day of December, 1897, just sufficient to
152 have ripped the scalp back in the condition you have found it, without blow on the skull so as either to fracture the outer or inner table; that the wound was dressed and healed; and that the child went about its play inside of a month; and it had the measles thereafter; confined to its bed and the house, and in from one to ten days thereafter it had a convulsion, whether it was epilepsy or not; we will call it a convulsion. What do you say as to which of

those causes, the heredity, the measles or the simple tearing of the scalp from the head would you attribute that convulsion to?

A. In answering the question, I would like to state that I understood from the previous testimony that the child had measles three days, and then let up. Is that included in the question?

Q. I have included measles in the question. Now, see that you understand the question—it is free from any blow, simply tearing of the scalp. There is no blow on the head.

A. My question—I simply wanted to ask the question to know whether the attack of measles was severe or not; if it was an attack of measles that only lasted three days, these other conditions existing, I would think that the measles would have played a very small part in the production of the convulsions, if it came from some other cause.

Q. Well, taking the three causes together; the heredity, the measles, and the simple tearing of the scalp?

A. I should attribute it more likely to the tearing of the scalp, and the accompanying fright.

Q. Are you willing to say that that would be a reason for it?

A. I think it is a correct and possible reason; yes, sir.

Q. And you would say that, notwithstanding the heredity of the child?

A. Yes, sir.

153 Q. What would there be about a scalp wound in such a case as that, that would produce the convulsion four months thereafter?

A. It is—if it came from the scalp wound it would come from compression—irritation of the nerve endings in the scar tissue. They would be observable in such ways as that, by the production of nervous symptoms. They might, or might not be seen on a child by a physician making an examination. A scar might be found to be very tender to the touch, which would indicate great sensitiveness.

Q. We will suppose, for instance, it was not tender to the touch, you, as the examining physician had found that it was properly and regularly healed and capable of being handled and pressed, and all that; what would you then say?

A. It still might be sufficient of an irritant to cause a convulsion.

Q. Well, suppose you were called to attend that child in that convulsion, and having attended it through this wound; what do you say as to whether or not, you would have made an examination, to have seen whether the spasm was caused by this wound, or not?

A. I should probably have made such an examination.

Q. And you say you could have told, don't you?

A. I might have at that time.

Q. Well, you would be of opinion that you would or you could not make the examination, wouldn't you?

A. I should make the examination to learn; I would not make my opinion before examining it.

Q. Doctor, are there any pathological conditions which could

give rise to new or other symptoms now to be feared in the injured area of this child?

A. I couldn't say whether there was or not. There might, or might not be. I have known other scalp wounds on the
154 head of a child, than this. I never have seen epilepsy following any scar that I attended. From what I have seen and know, this is the first case of where epilepsy is ascribed to a scalp wound of this character.

Q. Doctor, see here a moment. Will you look at that child, now?

A. Yes, sir.

Q. It is asleep isn't it?

A. Appears to be, yes, sir.

Q. Is that a normal or abnormal sleep?

A. I couldn't tell from this distance.

Q. Well, go and see.

(The witness examines child.)

A. The child's eyes are not perfectly closed as they should be.

Q. The child has been moved here just a little bit; the position is not natural.

A. They are a little open; at least the right eye, a little more than the left.

Q. Well, what do you call it?

A. So far as that went, the child is in a unnatural sleep.

Q. Well, bar the little opening of the eye, aside from that, what would you say as to whether it is a normal sleep?

A. Otherwise it appears to be a normal condition.

Mr. GORE: I wish you would now take a look at the child's face; come back and look at her now, without touching her.

(Witness examines child again.)

If the court would permit, we would like to have the jury take a look at the child.

The COURT: If it is done very speedily, it may be done.

Mr. BACON: She is partially awake now.

Mr. STEWART: When the doctor's attention was first called to the child——

155 Mr. GORE: In all fairness, there should be no loud talking around the child, if the jury are to take a look at her.

Mr. STEWART: We have no objection.

Mr. BACON: We claim that the child has been disturbed.

Mr. STEWART: Considerably disturbed.

The COURT: There being no objection, the jury may look at her.

Q. The child is perfectly quiet, isn't she, Doctor, with all this muss—and sleeping?

A. Yes, sir.

Q. This is the only case of the kind, then, Doctor, that you know of, where a scalp wound is claimed to have produced the epilepsy?

A. I think of no others.

Q. And all you know of this matter is what you have been told

by the lawyer and the father and the mother and the parties interested in the case?

A. I did not understand that the convulsion, or epileptic attack, was caused by injury to the scalp alone. It was intimated that an injury to the nervous system of the child was an equal factor with the local injury; to the visible injury, the fright and shock of the child assisted.

Q. Doctor, you were asked upon direct examination as to whether or not the two causes, the fright and the injury, would be more likely to produce this result than either one; and I understood you to say that they would be more likely to produce the result than either one. Is that correct?

A. Than either one acting separately; yes, sir.

Q. Did you hear Dr. Crane's testimony on the stand?

A. I heard most of it.

156 Q. Are these two causes, fright and injury, of the same character? Do they work the same on the nervous system to produce that result?

A. No, sir; they work in different methods.

Q. Work in different methods?

A. Yes, sir.

Q. Then, did you hear Dr. Crane say that because they did work in different methods that he could hardly attribute a combination of those two things to any one more readily to produce the result than either one, acting separately, would do?

A. I didn't hear him say that; no, sir.

Q. If he did say so, would it be right or wrong?

A. I should have great respect for his opinion.

Q. But still, you would hardly indorse it, would you?

A. I gave my opinion.

Q. Doctors are very careful about running up against one another's opinions, are they not?

A. No, sir; I think not. Such scalp wounds as this, when accompanied by fright, do not generally cause epilepsy; it is not a general result; it is a possible result. This is the only occasion I know of the kind. Epileptic fits are followed by a period of unconsciousness, then probably followed by sleep. That unconsciousness lasts different and variable time. It might last from fifteen minutes to as many hours, or more; I could not say exactly. If there was no unconsciousness at all, following the spasm, it would indicate that it had not been a severe spasm. In epilepsy a spasm is prescribed by what is called sensation aura; a person always gives and precedes such an attack by a cry. It is described as a mixture between a scream and a groan, and all over, brief.

157 Q. Now, instead of that you had several minutes of talk, screaming, if you please, and telling them to "put out that dog; put out that dog; put out that dog—or those dogs"—and then had a spasm; what do you say as to whether or not that was a genuine epileptic spasm?

A. It could be; it might have been a genuine epileptic spasm. I could not give the minimum and maximum time from my experi-

ence. I have seen them last for fifteen or twenty minutes, and have seen them continue several hours. I have seen them in a child, four or five years of age. I have seen them last several hours in the spasm itself, and they would come out of it.

Q. Do they increase in severity, or decrease as time goes on?

A. If the child was coming out of the convulsion the symptoms decrease—spasms decrease.

Q. But in severity, I mean?

A. Yes, sir; decrease in severity.

Q. If they get over it?

A. Yes, sir. I have never seen such an instance as a case of epilepsy produced by fright. I have not had the experience with epilepsy from an injury, taking the case from the time the injury was received, until the epilepsy developed.

Q. Never have had that. All of your experience, then, comes after the cases have been well developed, and of some years' duration? In other words, chronic cases?

A. So far as I can remember; yes, sir.

Mrs. HANNAH FYE, being recalled for further cross-examination by Mr. Bacon, testified as follows:

At the time of the spasm of April 14th. I remember calling in Mrs. Berge. She came there immediately after the spasm was over. I should think five or seven minutes—probably ten. Probably five or ten minutes. When she came, I do not remember of talk-
158 ing with her to the effect that it was just three weeks to a day since the child was taken down with the measles. I don't remember of saying—speaking about the measles in the time of the spasm at all. I would not say whether it was three or four weeks. I rather think about four weeks, since the child was taken with the measles, that she had the spasm. The 14th of April was either three or four weeks after the child was taken down with the measles. If I did tell her so, probably I told her the truth. I tried to tell her the truth. No, I don't know as I could. I was so excited and worked up over the affair, the child having spasms.

Q. You knew then, how it was, didn't you? You knew the truth about it, how long it was after the child had the measles. It was three or four weeks, I thought, since it got well from the measles that it had the spasm.

Q. Now, don't you know Dr. Smith's visit was on the 24th day of March for that child, for the measles?

A. The 24th of March?

Q. Yes.

A. Well, I don't know. I called him the first day that it had the measles. The day that she was broken out, and worse. I only called him once while it was having the measles. He left medicine for me to give her at last. I cannot say which way it was from the 24th of March, whether it was before that or afterwards, or whether it was on that day. I don't just exactly recollect. I do not remember producing this fork to Mrs. Berge on that very occasion. I don't think Mrs. Berge ever seen the fork. After I took it out of

the child's mouth it was left on the table there. I don't think that she ever seen the fork after that. I do remember mentioning it, that I used this fork to prevent the child from biting its
159 tongue; mentioning it to Mrs. Berge when I called her in. I do *no* not remember telling Mrs. Berge on that occasion that I remembered my mother using a fork when one of my little brothers had fits; nor saying anything about one of my brothers having fits, or such spasms as this. I don't remember of my mother using it when one of my brothers, when he was little, had such fits or spasms. I don't remember mentioning anything of the kind to Mrs. Berge. I have a brother that was ten years younger, probably younger than I. He is dead.

Q. Now, just while we are there, please give the names of all your brothers and sisters. The next—that you ever had—all the children of your parents that you know of, their names. I will ask you about each one of them. The eldest one; what is her name?

A. Mary.

Q. What became of her?

A. What became of her? She is dead.

Q. Where did she die?

A. She died here in the asylum at Kalamazoo.

Q. How many years ago?

A. Maybe four or five years ago; she didn't die of any brain trouble; she died of acute consumption, was what the doctor stated in the letter wrote to us.

Q. Her name was Mary Flynn, wasn't it?

A. Mary Flynn. She was never *not* to be real insane; it was about the time of the change of period of life; she was about forty years of age.

Q. How many years?

A. Her age was working on her; we had younger children, younger brothers and sisters at home; she was very cross and irritable with the younger ones, and my mother thought best to
160 send her here as they had better medical aid, better ways of taking care of her; she was not crazy; she was not violent—she was not—she had no brain trouble that we knew of, I can bring proof of that.

Q. I don't blame you for being excited; I don't want to interrupt you if nobody else does. Now, how many years was she here?

A. I should think about two years.

Q. Now, the next youngest child. What was its name; the next child in age to Mary?

A. Louise. Probably four or five years younger than Mary. She died of child-birth about ten years ago—a kind of consequence of child-birth. She was not afflicted with any disease that I know of. The next child after Louise was John. He died of lung fever. He went to a fire and got wet, got his clothes wet clear through and took lung fever; it ended in quick consumption. He died at home in Niles. He died since my sister did—my sister Louise. The next child is David. He is dead. He drank and exposed himself, laying out nights, exposed his health, and he died of an attack of the

grippe, and run into quick consumption or something or another. The next child was Will. He is dead. He died away in the State of Maine—the letters came stating that he died with the grippe. That is all I know about it. It was about five years ago. He was not afflicted with any particular disease that I know of. The next child was Joshua, the youngest. He died. He took the grippe; he drank and exposed himself and brought on the grippe from exposure, and died.

Q. How many brothers had this habit of drinking?

A. Three—two.

Q. So it was means of bringing on fatal disease?

A. Yes, sir. My father and mother are both dead. My
161 father died of neuralgia. He was a man 75, was a policeman there in Niles twenty-three years; was on duty within six weeks previous to his death. He was not a drinking man. My mother was about sixty years when she died. She died of the grippe. I couldn't say as to her going into quick consumption. I was there when she died. It was an ab-cess or something formed in her stomach. That was what it was said she died of. My mother has but one sister, and she is an old lady eighty years living in Niles. Strong, hale and hearty woman. There were no other sisters or brothers of my mother. Her brothers are living; one died last summer, an old gentleman, seventy years Her oldest brother is living in Chicago. Richard Evans, he is about somewhere over seventy. That is all the brothers she had. I have mentioned all of her brothers and sisters that I know of. I don't know my grandfather or grandmother. I never seen either. I never heard when they died. They died in the old country, in Ireland. My father and mother were born in Ireland.

Dr. RUSH MCNAIR, being recalled for further cross-examination by Mr. Stuart, testified as follows:

(Last question and answer read by the reporter.)

A. I cannot say how much doubt there is at the present time in the minds of medical men to most of the various assigned causes of epilepsy, and these spasms.

Q. Doctor, you have testified something with reference to reflexes, and shown us how it was done; but we have had no comparison to demonstrate what is normal and what is abnormal. Now, will you tell us what should be the state of reflexes and what you find in this case?

A. The amount of reflexes depend upon the weight of the
162 stroke somewhat. In this child, the stroke that would produce a certain amount of jerk normally, in this child produces an excess.

Q. Now, how do you measure the stroke. What would be the force necessary in this child, to get a normal, and what necessary to get an abnormal exhibition of the reflexes?

A. The abnormality of reflexes would show upon a slight or severe stroke.

Q. Now, Doctor, in your experience have you ever tested or demonstrated by actual science the force of a blow that would produce reflexes, either on what you would call a healthy and normal, or an unhealthy and abnormal person?

A. No, sir.

Q. The whole thing, then, depends upon your own judgment as to the force of the blow you gave?

A. Yes, sir. It is true that some people make no demonstration at all, when you strike them in that place. Others are very active. And both may be equally healthy. And that may be true in children as well. My opinion is that children do not develop typical epilepsy in their first spasm.

Q. But the description, which was given to you, as to what this child had and the symptoms she had, was a typical exhibition of epilepsy, was it not?

A. It was; I would consider it an epileptiform——

Q. Was it typical?

A. No, sir.

Q. Were you given more than one case with the child?

A. Only the seizure was mentioned, that is all.

Q. Now, then, what was left out of it that failed to make it typical?

A. I would answer that question by saying that one symptom was mentioned which was not typical. I have not clearly in my mind about the description given to say whether there were some wanting.

163 Q. You haven't clearly enough in your mind to say whether it was typical or not?

A. Yes. I haven't the recollection of the description in my mind.

Q. Doctor, if you had known at the time, or if you now know that one of the mother's brothers, of this child, in its infancy, about the age of this child or a little older, was afflicted with this same character of spasm, so that the mother of that child, and the mother of the mother of this child, used a fork or some other instrument to keep the child's mouth open, what do you say, as to whether or not you would conclude from that, that there was hereditary tendency to epilepsy in the family?

A. I would conclude that there might be such a tendency.

Q. And there might be—such a tendency would be quite as probable, would it not, as it would—that this spasm might have resulted from the scalp wound on the head by the dog?

A. No, sir.

Q. Why not?

A. Because the injury of the child was a factor in the question, nearer at hand.

Q. If it was inherent, it came with its birth, did it not?

A. Yes, sir.

Q. Then it was with the child all the time?

A. Yes, sir.

Q. Then the hereditary diseases and traits would be the last to

develop and show themselves, would they, Doctor, in such a case as this, as against injury and fright?

A. I would consider an injury or a fright, a more active factor at that time.

Q. But suppose there was nothing there for it to act upon, of that character; would it produce it then?

A. It might.

Q. If it did, then it would be an original cause, would it not?

A. Yes, sir.

164 Q. But if these other factors were there, it would be nothing more than an exciting cause, would it?

A. Yes, sir. I cannot say as to whether or not the seventh nerve supplies the injured area, in this case, where this wound took place. I could not answer the question. There is a seventh nerve. It is one of the cranial nerves. It is classed as one of the cranial nerves. I am not sure of any other name for it. I am not sure what its functions are. There are differences in nerves, and they perform separate and distinct functions. Some nerves are motor nerves, that preside in the motions of the body; others are nerves of sensation. One is called the motory, and the other the sensory.

Q. Now, what is the seventh nerve?

A. I cannot give you a full description of the seventh nerve. The functions of a motory nerve is to produce motion in the muscles to which it goes. In other words it is a sort of an electric current going out.

Q. The sensory comes to, brings in, does it not?

A. Yes, sir.

Q. Then, if this was—if Dr. Crane is true, and this was the seventh nerve, and the seventh nerve is a motory nerve, the child could not be affected through it, could it, inasmuch as it is is a motory nerve?

A. If a motory nerve was severed, the part beyond the cut point would not be supplied.

Q. Precisely; but what affects the nervous system is what comes into it; not what goes out from it, is it?

A. Yes, sir.

Q. Then if the nerve that carries out the message is hurt, the nervous system would not be affected as it would if the nerve, or sensory nerve was injured, would it?

A. Yes, sir. I call a child recovered from measles when
165 the rash has disappeared: when the cough is gone, and the child has recovered its strength, and is free from any other results of the attack. I should wait longer than that when the rash has gone, before I could call them well. The cough would last longer, perhaps, than the rash. I would wait until the cough had disappeared, or any other affection. Suppose the child was confined to its bed on the 24th day of March, the rash just appearing on the body; the rash would disappear, probably in about a week, and you would not let the child out immediately after the disappearance of the rash, because, in the average case, you would have a cough that would last from three days to a week longer. In an

average case it would not be safe to consider a child over the measles from the time it was first taken down with the rash, to let them out under two weeks. And might run three or four.

Q. Then now, Doctor, considering this child to have been taken down with the measles, and the rash first appearing on the 24th of March, the 14th of April would be exactly three weeks from that day. What do you say, then, as to whether or not this spasm was as likely to have occurred from measles as from any other cause?

A. I could not judge the matter without knowing the exact condition of the child at the time.

Q. And that you have not been advised of?

A. No, sir. All I know about it is the question put to me by yourself; talking with the mother.

Q. What kind of force is necessary to cause a fracture of the inner table of the skull, without fracturing or depressing the outer skull?

A. It would take a severe blow.

Q. Would it make any difference whether it was a direct or slanting blow?

A. Yes, sir.

166 Q. Which would be the most likely to produce it?

A. The direct blow.

Q. From what you have seen and examined of this child, what do you say as to whether such a thing could have occurred in this case?

A. It may have occurred.

Q. It may have occurred. What would you say were the proportion of the chances against it having occurred?

A. Well, I could not undertake to give any exact figures. The proportion, the majority of chances would be that it was not fractured.

Q. Exactly so. Doctor, have you seen many cases where the scalp was cut in the same manner as this?

A. By the bite of dogs?

Q. Yes.

A. I have seen a few.

Q. How many?

A. I couldn't say.

Q. What are they?

A. Well, I have seen slight scalp wounds produced by the bite of a dog; I can recollect but one now; the bite upon the forehead of a child.

Q. What results followed?

A. The forehead was torn; it was attended surgically and recovered.

Q. No spasms from it?

A. No.

Q. From neither of them?

A. No, sir.

Q. Doctor, what relation would high temperature have to such a spasm as you understand this child had?

A. A child might have high temperature at the advent of the spasm.

Q. I believe you defined what epilepsy was?

Mr. GORE: No, I don't know that I asked him.

Mr. STEWART: I will take the Doctor's statement.

A. I have not; no, sir.

Q. Then, if you have not, I will ask you what epilepsy is?

A. The definition given by one author is, that it is an
167 affection of the nervous system characterized by attacks of unconsciousness, with, or without convulsions. That is the book definition. There are more forms than one, of epilepsy. There are many kinds; I don't know how many are recognized. I could not say from what causes the majority of the cases arise. I think those who have made a study of the question could give an approximate estimate.

Q. Exactly so, again. Now the familiarity with the subject, then, of this particular class of disease fits one to better answer these questions than you are, I suppose?

A. Yes, sir.

Redirect examination of Dr. McNAIR:

Some forms of measles are less violent than others. They may be severe or mild. The ordinary disease termed measles, there is such a disease; another term is collioulus, Dutch measles, German measles, a distinct disease is the latter. A milder type. The rash appears in that form, about three days.

Q. Something was said to you by counsel, with reference to hereditary tendency on the part of the relatives of the mother of the child to insanity, and you were asked, if in view of that circumstance, you would still say that the fright and injury caused by this assault, was the most likely cause of the epileptic convulsion. You answered, I think, that it would be. Now, I ask you, if that tendency would not make or would not render the child more susceptible to epilepsy, from such an injury and fright?

A. I think that it would be more susceptible to the injury. I have examined the child's eye this morning with reference to the little scar I spoke about yesterday. I should call it scar tissue; it appears to be full of little blood-vessels and thickened tissues.
168 Epilepsy is treated in works on general medicine. That disease comes within the general practice of physicians the same as scarlet fever and measles. I don't know whether there is or not any special works on the subject of epilepsy. It is no specific, special, distinct science. Not any more than any other branch of medicine.

Recross-examination of Dr. McNAIR:

Q. You say with this hereditary tendency, it would be more susceptible to excitability, and these spasms, than without it?

A. In my opinion it would.

Q. And that would be true with the disease of measles, or anything else, the same as a blow, would it not?

A. Yes, sir.

HENRY W. FYE, being recalled for further examination by Mr. Gore, testified as follows:

I was not present on the 16th of April, when the child had the convulsions, that day. I saw her after the convulsions, in the evening, when I came home. I think I have testified as to the measles. It was about three or four weeks before this spasm that she had the measles. She was in bed about three days with the measles, and my wife kept her in the dark room, about a week, or a week and a half afterwards.

Q. Do you remember about how long she had been out, running around the house, at the time of this first convulsion?

A. It was before this first convulsion.

Q. Yes?

A. Yes, I think she was about around the house; she would never let her go out much—she would let her go out in the yard and around.

169 Q. She had been out some, had she?

A. Yes, sir.

Cross-examination of HENRY W. FYE by Mr. STEWART:

I have known Mr. Chapin, I guess, eight or ten or fifteen years. I now live within seven blocks of him, I should judge, and have lived there five or six years. I pass his premises a great many times. Sometimes I pass his house going up to the depot. His house is not in a direct line from my house downtown or the street; it is off to the north of Main street one block. I first became aware of the fact he had this dog Duke four or five years ago, I should judge. I am sure about that. I have seen the dog in the past four or five years in his yard. I saw him on the street, I know; I saw him over a year ago, for I helped to fix his boiler in his cellar over a year ago, and he had him then.

In my direct examination I testified something with reference to his tearing around like a tiger. I have seen him do that. Yes, sir; around the fence; inside of the fence. Well, you can set it most any time you are a mind to. I couldn't say just the date or day when I see him first. I guess here within the year. It hain't been a year ago. I saw him do it within the last year. I saw him before the first time. I couldn't tell just the day and date.

Q. How many years?

A. I never paid no attention to the dog; he was inside of the fence and I knew he could not bite me through the fence. I suppose if he got out he might have bit me, but I knew he could not get out through the fence. It was a big iron fence, seven feet high.

I cannot explain how long ago it was—I first discovered those
170 actions of the dog by passing along there; then I discovered them when he tore the head of my child, was enough.

I had been confined to my house with the ailment since the 21st

of last July; that is, in Niles. I was two weeks in Elkhart before I got home. During the month of December I was home all the time, pretty near; I walked back and forth to the doctor to get my arm dressed. I had Dr. W. H. Smith.

I only know the young ladies that were coming there that evening, on the 16th of December, from what my wife said. I bought the beer the same day the girls came up to the house. They was pint bottles. I bought it of W. F. Reams, in Niles. The girls came to the house, I think, along betwixt half past seven and eight o'clock, somewheres along there. I cannot say as to the time. I didn't look at the clock, whatever. I couldn't state right evenly that she came at that time. I didn't notice the clock. It might have been half past eight. My wife opened the door. I was sitting on my lounge—back of the table. My house faces or fronts to the north.

Q. From what direction did you make the entrance to the house?

A. I go in at the north side and east wing. I walk—the door is about middle ways of the building. I enter from the side that faces the north. That wing was used by me on the 16th day of December last as a dining-room, sir; we ate in there when we had anything to eat, and we had to go through our dining-room to get into our sitting-room. The sitting-room is where my wife and child slept. It was used as a sitting-room and bed-room both. The bed set in the southeast corner, close to the ceiling or wall. One side of it was up against the wall and the head of it was up against
171 the wall. That night of the 16th it was the same way. I couldn't say whether my wife moved it an inch or had it turned clean around. I couldn't say to that. I don't know whether it was moved *kita*-corner across the corner of the room, the southeast corner. I don't think it could be. She may have pulled it out a little ways to get back of the bed, or something or the other. She sometimes pulled it out about that far from the wall (indicating) but generally it sets up against the wall; the head and side. I don't think the bed was moved at all that night. That is my best recollection, with reference to the sitting-room and bed-room; the entrance from that room into the dining-room was on the east side from the south side of this sitting-room. I should judge about half way to the main part.

Q. What was the size of this sitting-room?

A. I couldn't tell you that; I think it would take about thirty yards of carpet. I think it is pretty near square, the room is. With reference to this sitting-room and bed-room, the rooms that were occupied in this house by Mrs. McMichael was on the east side of the—the west side of my house. One room was on the west side, and there was an angle of it came back on the south side; then there was a shed off that south side; the building is built—the house is built right on the corner. I know where the bed-room of Mrs. McMichael was in their part of the house. There was a door going from the west side of my sitting-room into that bed-room. That door opened at this time so you could come in and out. No, that door wasn't on the—the south door was going into our sitting-room; I think she had her bed against that door. We didn't have

no table in there at all. I didn't drink beer that night. My wife opened the bottle and passed the beer around. I bought two
172 bottles that night. It was served in glasses; glasses about that high, I should judge (illustrating). I don't know how many glasses a bottle would fill. I was in the room there until my child got bit, sir. The dog was in there, I guess about to the time he bit my little child, up to the time he came in, fifteen or twenty minutes, I should judge. I recognized the dog was the Chapin dog as soon as he came in.

Witness then described where the ladies sat in the room and the location of the stove and furniture in the room, and then said: I went and got the beer in the cellar myself, as I stated before; I brought it up and set it on the table. I think my wife went and got it from the table. I could not say how long after the ladies sat down it was before she went to the table and got it.

Q. With reference to the time when your wife went and got the first bottles of beer, did the dog come into the dining-room?

A. Why, I suppose they drank their beer and sat the glasses down; there was, one of them was—I will show you in the paper here (indicating), then he laid right here, and I went in and down into this chair, she had the dog here, patting it; she was loving him; she wanted my child—my child was behind me in the chair here, she wanted my child to come and pat the dog, or get on its back. I said, No, my child is a stranger to the dog and he might bite her. She said, No, he had been raised with children.

Q. And had the beer been drunk at that time?

A. Well, I couldn't say to that, whether they drank it all or not. After that occurrence it was not over four or five minutes before the child or the dog went into the dining-room. It is not true that the child then and there in
173 that room, came up, and I did not tell it also to come and pat the dog, and she didn't pat the dog in that room. The dog did not lie down in the sitting-room. It went around the stove, came in by me and he went out into my dining-room; he stepped out—we could not see him; we thought he had stopped there. It wasn't that quick (indicating by snap of finger) until he had my baby's head torn to pieces. He hadn't been in the house more than fifteen or twenty minutes. My child was in the dining-room, sitting there playing, and the dog followed her in. It is not true that the dog first lay down quietly in the sitting-room, and after a time, and after being patted by the lady I speak of and my child also, that getting warm, he moved on into the sitting-room where there was no fire, and lay down a little while, and after a short time my child went into the dinning-room. The child was in the dining-room when the dog first went in there—and sat down. She was afraid of it. We have a sewing machine in the dining-room. It was there that night. That sewing machine could not have occupied the southwest corner of the dining-room that night when the child and the dog were in the room, for my door goes right in there; it could not have unless it sat right in the middle of the door. With reference to the southwest corner of the room, the blood on the base-

board was right within about two feet of my front door where I come out and in. It was west of the door, on the north side. The machine was not in the northwest corner of that room. It could not be anywhere else only right there, because the door comes down in the cellar, and one into the sitting-room. The machine set on the west side of the room. The blood was northeast of the machine, three or four or five feet east. I could not say whether or
174 not, the bottles were brought in the room, and the glasses filled in the sitting-room or in the dining-room. I don't know whether they were filled more than once or not. Before the ladies came I don't think there were any bottles of beer drank in my house. My wife may have drank some of the beer; I don't know. She may have drank some of the beer before they came that night; I don't know. The child didn't like it at all. She didn't drink any at all that I know of.

Q. That settles that. How many bottles of beer were drank there after the ladies came?

A. I didn't think there was only one bottle of beer drank there after the ladies came. I think it is not true that I brought in two bottles of beer after they got seated and the subject was in order, and they drank and talked until those two bottles were gone. After a few minutes I did not make the remark, "Ladies, there is no more beer out there," and then brought in two bottles more; nor during this time was the child given two cups of its own out of that beer, and the child drank it; nor was the subject of the child drinking beer talked about in our presence, and the presence of those ladies, nor did my wife say that the child had had three cups or glasses of beer before they came. And after the four bottles were emptied, the dog did not go out into the dining-room because of the heat in the sitting-room, and after a few moments the child followed the dog out there. My child was in the sitting-room and the dog went out after her. The child was within the line of vision of myself in that room after it had gone into the dining-room. I could see its little feet sitting on the floor. I could just see its little feet and legs, sitting on the floor.

Q. And from which way did the dog approach it?

175 A. I think the dog came around the table and approached the child.

Q. In which direction?

A. It went east, came around the table north, then came on the west side. When I kicked him he was headed towards the west, and I kicked him off of my child.

Q. And the first you saw then, was what, after the child went into the dining-room.

A. The child was sitting where it was, when I kicked the dog off; the dog made for me, and the child was bleeding so, my wife grabbed her and ran into the sitting-room. I didn't see her after that, for a few minutes.

Q. Immediately after this time, do you remember having made this remark: "There! This is what I have been expecting all the evening"?

A. I don't recollect ever saying any such words. The table set right in the dining-room. It had a table-cloth on. I couldn't say how far down towards the floor the table-cloth came. I am not posted on table-cloths.

Q. I ask you how far towards the floor that cloth came on that table?

A. Well, it might vary; the table didn't always have a table-cloth, and I cannot tell.

Q. Didn't the cover of that table come clear to the floor, so that you could not see under it?

A. No, sir; there ain't any table-cloths in the house of that kind.

Q. I didn't ask you whether you had any table-cloths in the house of that kind, sir; I asked you if the cover of that table didn't come to the floor, so you couldn't see under it?

A. No, sir.

Q. Now, what other furniture was in the dining-room?

A. In the dining-room?

Q. Yes.

A. There was a few pictures on the wall.

176 Q. I mean on the floor. I am not speaking about the drapings.

A. There was a lounge on the floor; a stove, table, a sewing machine, and there was a couple of chairs, maybe, set around the table.

Q. You say the chairs were around the table?

A. I think they was around the table; they always do set around the table; we push them under the table to get them out of the way.

Q. And after you made that remark, "This is what I expected—had been expecting all the evening," didn't your wife speak up, and then call you by name and say, "Why did you not then put the dog out of doors?"

A. I recollect no such conversation at all.

Q. Will you say that such conversation did not occur?

A. I don't think there was, sir. I don't think my wife was—she was so excited she knew what she was saying.

Q. What time in the evening was it that this occurrence took place?

A. Biting the child?

Q. Yes.

A. I couldn't say. I didn't look at the clock. I couldn't say whether it was half a past—I should think it was betwixt eight and nine and a half—somewheres along there. After that I went after the doctor. The girls were still here in the house when I went. I went directly from my house to the doctor. I couldn't say what time it was. Dr. Baldwin was the doctor. I did not go to some other place before I went for the doctor. I went after the doctor and I ran across to Henry Berge's and told him my baby was all torn to pieces by a dog. Henry Berge lives *kiti*-corner across from my house. He lives on the northeast side of me. I did not go there and

talk with Mr. Berge and he didn't tell me that I had better
177 go for a doctor, and then I went from his house for the doctor. I had went and telephoned for the doctor, then I went over there. I told Mr. Berge what had happened in my house and he went over. He went over with me. After I got back it was about fifteen minutes before the doctor came, somewheres along there; he had come clear from the hospital. Mr. Berge remained there until the doctor went away. He held the lamp while the doctor sewed up my baby's wounds, and done all he could. I didn't see the doctor do it up at all. I didn't see the doctor sew it up—the child's head, at all. The doctor stepped in when he was going down to his office after he ate his breakfast in the morning, after the accident, the next day. As to the visits the doctor made during the time of the wound, they were three or four—maybe five. The child was three or four weeks in bed; that is, in bed and in the cab; we took her from the bed and put her in the cab to rest her, and wheel her around.

The photograph was taken the sixth or seventh day after the child was hurt. The stitches had not been taken out of the scalp at that time.

Before I had my arm broke, I was working for the Elkhart Box, Board and Paper Company, at Elkhart, Indiana. I would come home nearly every Saturday night, and go away Mondays.

Q. Now, Mr. Fye, prior to the 16th of December, 1897, when was it that you bought the last bottle of worm medicine for the child?

A. I couldn't say to that. I know I bought one bottle of worm medicine for the child of Mr. Griffin. I cannot give you anywhere near the date.

Q. Did you assist in giving the child medicine?

A. I don't know whether my wife did or not.

178 Q. I say, did you assist in it?

A. No, sir; I didn't. I remained home from the 16th day of December, and was there on the 14th day of April, I remember the child having been taken down with the measles. I think it was the latter part of March, somewheres along there; I couldn't just tell the day and date. I had Dr. Smith at that time. I was in the house on the 14th day of April, when the child first gave these manifestations of a spasm. I was lying down when—and she wanted me to lay down with her and she would go to sleep; when I lay down with her and she goes to sleep. I always turn my back to her to keep her from talking to me, and she will go to sleep then; I got up and went outdoors; she had been around with me the first part of it, she wanted me to rock her; then after I got to rocking her, she didn't want me to rock her; she gets up and she goes over on the lounge, and she gets down on her little knees and she lays her head on the lounge; she says, "Papa, if you will lay down with me, I will go to sleep." Well, I laid down with her and turned my back to her and she went to sleep. I got up and went out; I guess I hadn't been out more than four, or five, or six minutes; my wife hollered at me, my baby was having a fit; I ran in there and her eyes were rolled up, and her face was red and flushed;

her eyes were set (illustrating) like, and going that way; that is all I could see of it.

Q. Well, what did you do then?

A. I run up, and I see my wife had her finger in her mouth. I said, "My gracious, woman, she will bite your finger off." So she told me to get her a fork. So I got her a fork, or a knife, or anything I could grab a hold of—so I got her a fork and she got
179 it into her mouth, and I started for the doctor. That is the fork, Exhibit B, that I got her. I handed this to my wife and she stuck the end of it in her mouth. There were no marks on the fork at the time I handed it to my wife. I don't think there was the sign of a mark. I observe what my wife did with it after I gave it to her. She stuck it in the child's mouth. I am positive she put the metal end of that handle in. I couldn't say whereabouts in the mouth she put it. She may have stuck it right in the mouth; she may have stuck it back around, I couldn't say. I threw it down on the table. That fork has been in the knife box. We have used it right along ever since on the table. I have no other fork that has got any indentations in the metal at the end of the handle, excepting this one.

I think I was standing out in the back yard when Mrs. McMichael came in the room. I could not say whether any other lady in the neighborhood preceded her. I think Mrs. Berge came there after a little while. I couldn't say whether Mrs. Berge came there before Mrs. McMichael or not. She was in the room when I went in. I did not hear any of the talk between Mrs. Berge and my wife. I was in the room when the child first gave manifestations of the spasm. The child frothed at the mouth. Froth came out of each corner of its mouth. I gave my wife the fork; she said, "Look at her froth in the mouth," and I started for the doctor. I was gone and telephoned for the doctor; I staid there I guess, a little, but until they rung for the doctor; it was quite—a minute is an hour then, you know; I waited there until I heard from him; he said he would be up in a few minutes; well, he came in about eight or ten minutes, I guess, from that time.

Q. How long had the child come out of the spasm, then, when you went back into the house?

A. Had it?

180 Q. Yes?

A. Well, it was lying there jerking—the muscles.

Q. And the ladies were there also, both of them?

A. No, sir; there wasn't anybody in the house but me and my wife at the present when I went back.

Q. Then did you go out again?

A. I went out to the back door; yes, sir.

Q. And it was during your second absence that the ladies came. Is that correct?

A. Yes, sir. I think it was; yes, sir. In the first exhibition of the spasm, and my calling for the doctor, seven or eight minutes had elapsed. After I came back from the doctor, me and my wife was alone. I got her a pan of water to bath the child. I went out

again, and when I come back the second time, these two ladies were in the room there—Mrs. Berge and Mrs. McMichael. I could not say which lady came in first. One went in the back door, and the other went in the front door, and I was in the back part of the house. When I went in the second time, the doctor I think was coming. I could see him. The child was lying there when I went in this second time, perfectly helpless, lifeless; its eyes was opened. It did not recognize me or anybody. I could not tell you what the doctor did when he first got there, for I didn't see what he did do. My arm was in such shape that I had to keep out of the way, for fear they would run against me and break it over again. The child lay on this lounge or couch until she came out of the fit. I think she laid there a little while afterward, an hour or so, when she was put in hot water. She was bathed right on the lounge, her feet in a pan of hot water, and my wife was bathing her with a cloth. Her feet were hanging down then, in the water. The doctor took the temperature of the child there with something
181 he had in his hand, I couldn't tell you what it was. A thermometer, I guess it was. He said it registered something over a hundred. I couldn't say just how much. I saw blood in the child's mouth during the spasm; there was blood coming out of the corners of her mouth, as well as froth; both came out together.

Q. As the child came down with the spasm, did it say anything?

A. When it first came down?

Q. Yes.

A. Yes, sir, she said "Papa," she says, "I feel bad" she said, "I don't know what makes me feel so;" says she, "I feel funny." She went in the kitchen, she sat down on the doorstep.

Q. I mean immediately preceding the spasm, what did she say?

A. I wasn't there when she went into the spasm. I wasn't home that day she had the second spasm, the 16th of April. I know a young man by the name of Rossman. He is a cousin to my baby. I don't remember meeting him one night during the month of January, or afternoon at Niles, near the express office, in the city of Niles on Main street near the news depot.

The COURT: What is the name of the party inquired about?

Mr. STEWART: Arthur J. Rossman.

Q. Near the news depot, in the city of Niles. Don't you remember of meeting him there with this photograph and wanting to show it to him?

A. No, sir, I don't.

Q. And did you not then and there say to him: "Now, if you want to make a tip, just go up to Chapin's call out his dog, and make a jump at him and get him to bite you"?

A. No, sir, I didn't.

182 Q. "You can make all the money you want"—or that in substance?

A. No, sir; I never did.

Q. Did you not ask the boy if he ever saw the Chapin dog, at this same time, and if he knew him, and he told you he did, and

after he told you that he knew him, you told him if he wanted to make a tip, to go there and make a jump at him, and let him bite him, and then he could make some money out of it?

A. No, sir; I never did.

Q. Or that in substance?

A. No, sir.

Q. That you in this conversation then stated, "Have him make a nab at you or jump at you"?

A. No, sir; I never did.

Q. You never had any such conversation?

A. No, sir; I never had any such conversation with him.

Q. Did you with anybody else?

A. No, sir.

Q. Or chased you?

A. No, sir.

Q. Have you told us, now, all that you remember and recollect with reference to what took place there on the 14th day of April?

A. I have, sir.

Q. And the 16th day of December?

A. Yes, sir; I have, to the best of my knowledge.

Mrs. HANNAH FYE, being recalled for further examination, by Mr. Gore, testified as follows:

I have in that package the garments of my little child, and the sleeve of my under dress. That is the dress she had on at the time of the assault. That is the sleeve of the garment that I had on—my undergarment—and those are the bandages.

Sleeve marked Exhibit C.
Dress Exhibit D.

183 That dress buttoned in the back. This is the side of the injury; this is the sleeve of the under vest on which the injured side, the back of the head rested—I held her in my arms. I had on over my undergarment my wrapper, lined with sleeve lining and the outside material. It soaked through all the garments into that; the other portion of that garment. I ripped the sleeve out and washed the dress, as I had worked hard in it, working at Mr. Chapin's for two or three days; it was so I didn't think it was presentable to bring to court. I used the rest of it. Those others are bandages and medicated cottons, that were put on her head. Used to dress the wound. They came down over her chin.

Marked Exhibit E.

Mr. GORE: We introduce all these in evidence. Those exhibits have been from the time of the injury in December 16th, until this time in my own custody.

Q. Now, there is one matter with reference to the condition of the child from the time of the injury to the first convulsion. Did you notice anything unusual in her sleep, with reference to her eyes, and if so state what it was.

A. Very much so. She would tremble and jerk and kick and

turn; seemed so restless; didn't seem to find comfort anywhere. Wake every fifteen minutes or a half an hour. Her eyelids were always opened and shut; it seemed like her eyes were cast upward, the pupils rolling in her sleep. There were no interruptions in her sleep before she was injured.

Q. How long did that condition affect her eyes, continue after December 16th?

A. Well, it also continues yet. Last night at the hotel she had the same symptoms. Her arms would curl, her legs would jerk up, she seemed tremulous. I had not noticed conditions of that kind before the injury.

184 Q. What would you say was the nature and character of her sleep before this injury?

A. Very peaceful and quiet.

Recross-examination of Mrs. FYE:

Q. You remember Mrs. Berge being in your house when this worm medicine was spoken of at any time?

A. With Mrs. Berge?

Q. Yes,—being in your house when this worm medicine was spoken of.

A. No, I do not.

Q. You remember about the worm medicine that your husband got?

A. Yes, sir; a bottle of worm medicine.

Q. Do you remember talking to Mrs. Berge about your little girl being troubled with worms, more than a year before the dog bit her?

A. No, I don't; for I never knew she was troubled with worms.

Q. Don't you remember of your speaking of your little child being troubled with worms, to Mrs. Berge?

A. No.

Q. At your house within a year?

A. No.

Q. Before the dog injury?

A. No, I don't.

Q. Don't you remember talking with Mrs. Berge about the child being troubled with worms at any time?

A. No, I don't.

Q. What did you do—what did you get the medicine for?

A. Well, I got it to give it to her. I don't just remember talking particularly about it to any one.

Q. But you gave it to her for worms, didn't you?

A. Why, I imagined that was—she might have been troubled with worms, and I would try the medicine.

Q. What made you think so?

A. I don't know. Her complexion looked kind of sallow.

185 Q. How long before the dog bite was it that this medicine was bought—the book will show—at Griffin's will show?

A. I couldn't tell you.

Q. What is your best recollection?
A. I couldn't say.
Q. Don't you know whether it is a year, or a year or not?
A. Before the dog bite?
Q. Yes.
A. I think it was a year since.
Q. You think it was a year since?
A. If I remember right.
Q. About how long since?
A. Well, I couldn't tell you.
Q. But you think it was since?
A. I think so.
Q. Did you give her the contents of the whole bottle?
A. No, I didn't give her the contents of the whole bottle. There is some of it at home yet.
Q. You gave her about how many doses?
A. Maybe about half or three-quarters.
Q. About three-quarters of the bottle?
A. Yes.
Q. What is the size of the bottle?
A. It is a little narrow bottle.
Q. About what was the heft of it?
A. About that high (indicating).
Q. An ordinary druggist's bottle?
A. Yes.
Q. Now, do you remember talking with Mrs. Henry Moore about that little girl being affected with worms, too?
A. Yes. I talked with Mrs. Henry Moore; she was the one that told me to get the medicine; she had used it on her own children. She said Ruth looked kind of sallow like Katie, and she thought it would be good for her.
Q. You talked with her freely about that—about your little girl having worms?
A. No, I didn't talk very much. I was very busy to work;
186 I didn't have much time to see her or gossip with any of the neighbors.
Q. Well, when you did see her—you happened to talk of your little girl's indications of worms?
A. I don't remember. I have not seen many of my neighbors much this winter, for I have been busy.
Q. Wasn't it more than the complexion that made you to speak with the neighbors about the little girl having worms?
A. No, sir; not that I know of.
Q. Wasn't there something about the way she fretted or cried?
A. No, sir; she never cried or fretted much until she was bit by the dog. I had talked with my neighbors since; I told her since how she was convulsive and tremulous at night, and wakeful and restless, but I never remember talking much to her before.
Q. You say this worm treatment was since she was bitten?
A. I think so.

Plaintiff rests.

Defence.

Dr. ZELL L. BALDWIN, being sworn as a witness on behalf of defence, testified as follows:

Direct examination by Mr. BACON:

I am a physician and surgeon. I graduated at the Cincinnati Eclectic Medical Institute, and the Homeopathy Medical College. I have been practicing my profession ten years. All in Michigan.

I practiced about nine and one-half years in Lawrence, Van
187 Buren county, I went to Niles to enter into my business about November 3rd, I think it was, or 6th, last. My practice is of general nature. General physician and surgeon. I am the physician, the Doctor Baldwin who attended on Ruth Fye, the plaintiff, this little girl here. I commenced December 14th, 1897. That was my first visit. That was the time of this injury—this injury of the scalp. I was called there in the evening, and found the child suffering from a scalp wound.

Q. (Showing witness photograph.) Please look at that photograph and see if it properly represents the wound and stitches—which purports to have been taken about a week or ten days afterwards?

A. Yes, sir. I think it does, very well.

Q. Please state what examinations you made, as to the wound, as to finding injuries, and who assisted you?

A. When I first called on the child, I found the face well covered with blood, also the hair pretty well matted with blood, and suspecting an eye injury in those cases of wounds where they are not well exposed, I examined the eye first, and found no irritation there, and examining the scalp next, I found an incised wound as shown, a contused wound as shown in the picture.

Q. Did you examine it?

A. By raising the scalp in this case, I made a careful examination so as to see if the skull itself was injured, which I found not to be. And I at once proceeded to take antiseptic precaution; so I washed out the wound with antiseptic solution, and took, I should say, about fourteen stitches. I have forgotten the exact number of stitches, I think about fourteen stitches in the wound; after which it healed as you see the case now.

Q. What other wounds, if any, did you find?

A. There was no other marked wound in the case, except
188 the child's cheek about this point, (indicating) showed three or four light scratches, and a light redness, nothing more than the upper—the external layer of the skin being affected.

Q. How was it about any wounds upon the ear, or down in the region somewheres about the side of the lower part of the head?

A. I don't remember of any.

Q. Did you search for wounds?

A. I examined the child carefully, yes, sir.

Q. Did Mr. Berge assist you with the light?

A. Mr. Berge held the light for me that evening.

Q. When did you go again—have you the dates there in that book?

A. I made four successive calls that I charged up to the patient. I might have called there several times afterwards, in going to and from the office; I made several calls afterwards, probably five or six that I have no mention of.

Q. Can you tell us throughout what period those calls continued?

A. Yes, sir.

Q. About how long?

(Witness refers to memorandum.)

A. I dismissed the case December 21st.

Q. The injury was the 14th? How did it happen that you dismissed the case?

A. I was through with it.

Q. What was the condition of the child then?

A. Good.

Q. How was it——

A. (Interrupting.) The wound healed by first intention; there was no pus formed in the wound whatever. It was healed nicely by the seventh day.

Q. How was it about any results in the nervous system?

A. There has been no results, that I know of.

189 Q. Now, were you called again afterwards?

A. Not for that—not for that case during that time, no, sir; I was called again probably three weeks ago, to see the child suffering from a spasm at that time.

Q. What date was that? Can you give us that date?

A. It was the 14th of April.

Q. This year?

A. Yes, sir.

Q. Now, describe all that you there found.

A. At that time?

Q. Yes, sir, all that you found describe, distinctly, some of those jurymen are further off—it is difficult to hear.

A. Why, I was called to the case, the message having been sent, that the child was having a spasm. I went there immediately and found the child suffering from a very high fever at that time; the temperature was a trifle over 104, and the tongue was thickly coated, and the child was quite nervous at that time. I didn't see the child have the spasm, the father and mother told me the child had a spasm, and came out of the spasm probably two or three minutes before I got there.

Q. Can you tell what was the nature or cause of that spasm? If so, state.

A. The cause I ascribed at that time to the fever resulting from acute indigestion, fermentative indigestion; a large amount of gas had formed in the stomach, a putrefaction, and the fever probably was caused from the result; the fever ran quite high and produced congestion of the nerve centers, and produced spasm.

Q. Can you tell your reasons for that? Please tell your reasons why you came to that conclusion?

A. In the first place, there was some tenderness over the region of the stomach; the tongue was thickly coated with a yel-
190 lowish-white coat, especially the base of the tongue, the temperature was running quite high, the odor of the breath was quite marked, such as we find in nearly all stomach derangements of acute indigestion such as children have.

Q. Was that your last call there? Or did you call again?

A. I made one call after that.

Q. How soon?

A. It was the next day I think. I just called in there.

Q. What condition was the child in then?

A. Good.

Q. How was its nervous system on the second day?

A. Why it was not markedly exaggerated.

Q. Did you know of the child having the measles?

A. No, sir; I did not.

Q. Were you told of it?

A. At that time?

Q. Yes.

A. Well, I have forgotten whether I was or not.

Q. Can you tell, Doctor, whether that spasm or those symptoms that you saw and the spasm alleged, was the cause of this scalp injury and fright at the time in December 14th?

A. I had very good reasons for considering the spasm was due to the irritable condition of the stomach and also the high range of fever at that time.

Q. Did you make an observation of the eyes at all?

A. Yes, sir.

Q. Describe them fully. That is on the 14th of April at the time of the spasm.

A. The pupils at that time were normal—both of them.

Q. The 14th of April?

A. Yes, sir. After I saw the child about ten minutes after the end of the spasm.

Q. What would that condition of the pupils argue or mean as to epilepsy, or no epilepsy in a fit?

A. It would signify that the disease was an acute difficulty
191 in the first place, and also that the brain was not organically affected; more or less functionally affected.

Q. What would be the meaning of that, so that an outsider can understand as to whether that was a case of epilepsy or not?

A. By an organic change we mean there has been a change in the structure of the brain tissue; by functional difficulty, we mean that there is a deranged action of the brain.

Q. Well, would it mean epilepsy or not epilepsy, then?

A. From that?

Q. Yes.

A. No, sir; there was no epilepsy in the case.

Q. What?

A. It was not an epileptic spasm.

Q. Did the parents undertake to tell you the symptoms then, or Mrs. Fye undertake to tell you the symptoms?

A. Yes, sir.

Q. Did you take what she said as true, in her statement to you; what she told you?

A. Regarding the case?

Q. Yes, in relation to the spasm.

A. Yes, sir. She said the child had been having spasms. I took it for granted that it had been having them. I didn't see the child have spasms, but she said it had had.

Q. Did you examine the tongue? You didn't examine the tongue?

A. Yes, sir.

Q. Was there any wound, or bleeding, or any indication of it?

A. No, sir.

Q. About the tongue?

A. No, sir.

Q. Did either Mr. or Mrs. Fye say anything to you about the bleeding of the tongue—the biting of the tongue?

A. No. They said they took precautions against that; that they had a caseknife, or a fork, or something of that kind that they had put between the child's teeth in order that it would not bite its tongue.

192 Q. Did she say how that happened; or how that was suggested to her?

A. No, sir. Not that I remember of.

Q. You saw no blood, or no blood was mentioned. Did you, or did you not see any blood?

A. I saw no blood in the case.

Q. About its mouth at that time?

A. No, sir; there wasn't any blood in the child's mouth. I don't remember whether there was any cloths on the child or not. I don't think there was.

Q. Was anything said about frothing at the mouth?

A. Yes, sir.

Q. What was said?

A. She said—she spoke about the child having spasms and that it threw its head back, as one always does in those spasms, and the child frothed at the mouth and made a girgling noise as though it was choking to death.

Q. Your last visit was the next day, I think you have stated?

A. Yes, sir. Why, I called in the house, I think it was two or three days after that, I don't remember, just called in, but made no professional visit whatever.

Q. Now, as to whether the condition of this child when you dismissed the case for the wound in the scalp. State whether there was any indication of any permanent result or injury from that scalp wound.

A. Nothing but disfigurement.

Q. So far as can be—was there any indication at any time, of any permanent ailment, by resulting from this alleged spasm and on

the symptoms you saw on the 14th of April, and the next day, any indication as a permanent injury?

A. No, sir; the temperature passed off within a few hours.

193 Q. Now, Doctor, you stated you have made examinations of the skull, under the scalp wound.

A. Yes, sir.

Q. State whether there has been any possibility from what you saw of an injury to either the outer table or outer skull, or the inner table, is there anything there that could possibly make an injury to the outer table or the inner table, if that is the way they are denominated, in your trade.

A. In all of those cases of wounds about the head, it is always necessary to examine first the skull, because any wound received where the skull is cracked or indented down upon the brain, is liable to produce constitutional symptoms, will produce constitutional symptoms. So in this case I examined at once to see if the skull was intact, which I found to be so. There was nothing—the skull was not injured a particle and that was shown also by there being no temperature the next day.

Q. No what, the next day?

A. No temperature. There was no temperature in this case at all.

Q. What do you mean by "temperature"?

A. Temperature was not above normal. It was a normal temperature; there was no fever connected with this case, the healing of the wound. There was not a particle, and if there had been, the temperature in a case of that kind would have, I would have been on the lookout for brain symptoms.

Q. Was there any brain symptoms?

A. No, sir; not one.

Q. This is the wound case—not the spasm case in April.

A. Yes, sir.

Q. Now, the nerves, Doctor, where this injury was, what nerves are there there, and what is the nature of them? What kind

194 of nerves are there there, and how could this wound effect them, in your opinion, from what you saw?

A. The nerves control the scalp in that region, and of the two muscles.

Q. Well, what would be the natural result as to those nerves from this wound and its healing as you have described? Would it be any permanent injury?

A. Why, no permanent injury whatever. They are merely terminal nerves and the point—terminal nerves in a case of that kind is comparatively nothing in the healing of a wound—a wound of that kind.

Q. Now, about profuse bleeding, Doctor. At the time of the injury you found, how was it if you found profuse bleeding at the time of the injury?

A. Not especially, probably four or five tablespoonsful.

Q. How was it about bleeding in such a wound being beneficial or injurious to chances of healing?

A. We always calculate where a wound has any tendency whatever to be affected by poison, the more freely it bleeds without exhausting the body, the better it is for the wound, such as an animal bite or a wound from a poisoned instrument or anything of that kind; the more freely it bleeds the better it washes out this poison and the less danger there is of blood poison following.

Cross-examination of Dr. BALDWIN by Mr. GORE:

I said I graduated from the Eclectic Medical Institute of Cincinnati. It has been established I think since about 1845. I was there two years and a half. I began practicing at Lawrence, Michigan. I practiced at Lawrence nine years and a half, and then went to Niles. Lawrence is about 725 or 750. There is no hospital there. I have been connected with a hospital or asylum since I left college.

I had partial charge of one at Niles. That hospital is Dr.
195 Smith's. It is a private hospital. Between the time I went to Lawrence and the time I went to Niles I had not been in any hospitals.

Q. Most of your experience——

A. (Interrupting.) Do you mean have I ever attended a hospital since I began practicing in Niles?

Q. No, that isn't what I mean. I mean between the time you located in Lawrence to practice medicine and the time you moved from there to Niles, had you been connected with any hospital?

A. No, sir. Most of my experience was obtained in my practice at Lawrence. Although I have had other college advantages besides that one.

Q. You can state that later.

A. You asked if I had any experience besides the other. *A.* I have.

Q. As a practitioner?

A. No, sir, as a student.

Q. I was asking you for your practice as a practitioner.

A. Yes, sir.

Q. You found Lawrence a good town to live in?

A. A very good place for my business, yes, sir, at that time. I live not very far from the Fye family. There is no other doctor that lives as near as I do to their family. I am the nearest one. Mr. Fye called me I think that evening. The evening of the 14th of December. When notified I was wanted I was at the hospital. I do not know where the message came from, whether over the 'phone or a personal request. I think Mr. Fye called to my home, and they telephoned for me at that place. I said I came up there and found the hair matted with blood, and the face covered with blood. The first thing I did I proceeded at once, I think, to wash up the wound. They had been putting cloths on the wound before I got there. I have forgotten whether they were hot or cold.
196 There had been cloths put on there. The first thing I said I did, was to wash the wound, I think. I washed it with antiseptic solution. It was formaldehyd-. I did that before I made a

thorough examination of it. I might have just glanced at the wound or something of that kind before I washed it. That was before I put the child under chloroform. I washed the child pretty well before, and then I finished it up afterwards. I did this washing the second time I came to the house. I did not wash it at all when I first came. I was gone after the implements and the nurse, probably twenty or twenty-five minutes. It was probably an hour from the time the child was injured until the time I commenced to wash it. I think it was fully that. So that you might say the wound was a half an hour old when I got to clean it and work at it. I found a portion of the scalp torn back. It had been bleeding freely, quite so. They told me a dog had inflicted that injury. I have forgotten whether I saw the dog there or not. My best recollection is I did not see the dog. I don't think I did. I am not sure. I could not answer that question. I made inquiries about the dog.

Q. What inquiries?

A. I wanted to know how the dog injured the child.

Q. Certainly. But inquiries about the dog. Did you make any inquiries about the dog itself?

A. About the dog being all right you mean, so far as any rabbies are concerned, or anything of that kind?

Q. Not particularly that, but anything, of any kind.

A. I didn't at that time, no, sir. I did after we got the wound dressed and was going home. Miss Chapin was down, I went down there with her; I inquired at that time the nature of the dog.

Q. The nature of the dog?

A. Yes, sir. Whether he was a specially vicious animal or not.

197 Q. I am not speaking about the disposition. Don't you know that dogs frequently eat decayed substances, carrion, dung and things of that kind?

A. I understand that.

Q. Is it not possible for a dog to communicate by its bite such microbes as may exist in carrion, dung and things of that kind?

A. Yes, sir, it is very probable.

Q. Isn't it quite likely if that carrion and dung and microbes contained in them had remained in the blood of this child, or in this wound, for a half an hour before you got at it, that some serious consequences would likely result?

A. Yes, sir, it is, under certain circumstances.

Q. It might be so. Doctor, have you made any particular study of the nervous system?

A. No, not especially, no more than a general practitioner would.

Q. What kind of nerves do I understand you to say were injured by this assault?

A. I didn't say which nerves.

Q. Will you say?

A. The superorbital branch and the fifth nerve.

Q. What class of nerves does the fifth nerve belong to?

A. That belongs to the class of nerves that are connected directly with the brain, with the cranial nerve.

Q. You found this branch of the fifth nerve——

A. Why, connected directly with the brain.

Q. Injured by that assault, did you?

A. Yes, sir.

Q. Have you ever given any attention to the subject of epilepsy?

A. I have, yes, sir.

Q. Have you ever had any patients?

A. Yes, sir.

Q. Then you know that an assault upon the head may induce epilepsy, don't you?

A. I understand an injury to the brain may.

198 Q. Do you can—may not that injury be inflicted by an assault upon the head?

A. Yes, sir.

Q. What other physical causes may induce epilepsy?

A. Several.

Q. Well, go ahead and give them to us.

A. It may be caused by tumors of the brain, deposits of blood in the brain, irritation and injury to the spine, and certain form of reflexes—reflex epileptic due to aggravated irritations, some of the spinal organs of the body, such as the ovaries, or some classes of kidney diseases.

Q. Then it may be caused also by certain mental causes, may it not?

A. Yes.

Q. Name some of those.

A. Heredity plays a great part, excessive use of the brain and overstudy will produce it.

Q. What else?

A. Anything that will—sometimes an impairment of the general circulation of the brain.

Q. Would you say that was a mental cause?

A. Well, no, not necessarily.

Q. I want the mental causes. How about grief?

A. How about what?

Q. Grief.

A. Grief is not apt to cause epilepsy, unless it is so prolonged as to induce anæmia of the brain.

Q. It may produce it?

A. I say unless it is prolonged to such an extent, it may——

Q. I ask you if it may produce it?

A. Under those circumstances, yes, sir.

Q. How about a terrible fright?

A. That might produce it.

Q. One of the chief causes, isn't it?

A. No, sir.

Q. Laid down as such?

A. No, sir.

Q. It is not?

A. No, sir.
199 Q. Do you know—are you familiar with Dana's work on nervous diseases?
A. Yes, sir.
Q. Is that a standard work on that subject?
A. It is. I have heard him lecture.
Q. Do you agree or disagree with Dana on that subject?
A. That fright is the prime cause for it?
Q. That fright is one of the chief causes of epilepsy?
A. You said, "prime causes." You did not say, "one of them."

(Testimony of the witness on this subject read.)

Q. (Showing witness book.) I hand you this book by Dana. You are familiar with that, I assume?
A. I am acquainted with him I have heard him lecture.
Q. This is a standard book, isn't it, on the subject?
A. Yes, sir.
Q. Do you agree or disagree with Mr. Dana, with reference to the effect of fright as an inducing cause of epilepsy?
A. One of the greatest causes of epilepsy is injury to the brain.
Q. Wait. Answer the question.
Question read.
A. Yes, fright is one of the inducing causes of epilepsy.
Q. Do you agree with him that it is one of the—that it is a chief cause?
A. No, I don't think I should.
Q. Did you ever consult William Ossler's work on that subject?
A. No, sir; I have not.
Q. Have you studied Loomis on that question?
A. No, sir.
Q. Do you know what those authors have to say about it?
A. No, sir.
Q. What authors have you studied?
A. Gowers, mostly.
Q. Have you studied Hammond?
A. No, sir.
200 Q. Or Ross?
A. I have heard Hammond lecture on the subject.
Q. That is not what I asked you. Have you studied him on the subject?
A. No, sir.
Q. So you lay down then that fright may produce epilepsy; that fright is one of the mental causes and that it may result from depressed nervous condition?
A. Yes, sir. I stated that hemorrhage might produce it; hemorrhage or tumor of the brain. Hemorrhage of the brain is usually produced by the breaking or opening of a blood-vessel—by some great contusion of the skull. By contusion of the skull is not the chief way. No, sir. It is the bursting of a blood-vessel and apoplexy.

Q. Can you tell by examining this wound whether there was any likelihood of hemorrhage—internal hemorrhage?

A. Do you mean from the first examination?

Q. From your examination; yes, sir?

A. No, sir; I didn't judge that there was.

Q. You didn't judge there was?

A. No, sir.

Q. I say, can't you tell?

A. Not positively, not at first.

Q. No, you cannot tell? You cannot tell whether the inner table or plate of the skull was injured?

A. Why, yes, I think I could.

Q. You could tell?

A. I think I could; yes, sir.

Q. Now, tell us how you discovered that.

A. How I would discover it?

Q. Yes.

A. In the first place, if there was any very great injury to the skull, we nearly always look for insensibility, in cases of that kind; we always look at some special point where we would expect to find a fracture, and nearly all inner plates of the skull that are fractured, have a depression on the outer plate, unless it be
201 at the base of the brain, where the two plates are very close together.

Q. Isn't it a fact that the outer table is frequently uninjured, and the inner table fractured?

A. Not unless it comes from a special rebounding blow.

Q. Well, I ask you if it might not be induced in that way?

A. It sometimes is; yes, sir. It is very seldom; in case of that kind, we nearly always find a rise in temperature the next day.

Q. In that case you could not tell, could you, by your original examination whether it was so or not?

A. Not the first examination; no, sir.

Q. Might not there be a thickening of the inner table, as the result of injury?

A. There can be, yes, sir.

Q. Might not a hemorrhage induced in that way be a long time developing in the brain, and producing its ill result?

A. Well, the hemorrhage in a case of that kind would not be of very long duration, no.

Q. It would be speedy?

A. Yes, sir, just the same as it would from an open wound, it would bleed a certain amount, then it would stop. It would form a tumor at that time.

Q. Now, the natural tendency of ordinary hemorrhages are to absorb.

A. Yes, sir.

Q. You have said that hemorrhages may cause epilepsy.

A. Yes.

Q. These are not the kind of hemorrhages that are absorbed, are they?

A. No, sir.
Q. We will take one of those. Supposing that to have been induced by a fracture to the inner table, what would be the process of its development?
A. After the first advent of hemorrhage there would be a gradual thickening of the coverings of the brain until it formed a
202 covering over this hemorrhage, the first hemorrhage, to keep it in one position; after that it would either become larger by irritation or it would become absorbed.
Q. Doctor, you were called to treat this child on December 14th, and dismissed the case on December 21st?
A. Yes, sir. Stopped making professional visits at that time. I called on the case afterwards.
Q. You called afterwards at the instance of the defendant, Chapin, didn't you?
A. No, sir.
Q. Doctor Baldwin, didn't you call to see Mrs. Fye, about four weeks after this injury and tell her that Mr. Chapin had been to see you?
A. I think I did.
Q. Isn't it a fact——
A. (Interrupting.) I have forgotten whether I called at the house or not.
Q. Isn't it a fact that you did?
A. I am not positive I say, whether I called at the house. I saw Mrs. Fye——
Q. Isn't it a fact that you went to see Mrs. Fye at her house, and told her that Mr. Chapin had been to see you?
A. I told her that Mr. Chapin had been to see me. I couldn't say whether it was at the house or not. It might have been in the yard. It was on the premises.
Q. Didn't you tell her at the same time, that he wanted you to examine this child?
A. No, sir.
Q. Didn't you do so?
A. I examined the child at that time.
Q. Yes?
A. Why, I examined the child every time I have seen——
Q. (Interrupting.) Answer. Didn't you examine the child at that time?
A. For Mr. Chapin? No, sir.
Q. Didn't you examine it? That is the question.
203 A. I have examined the child every time I have seen the child, Mister. I have taken a look at the child——
Q. Didn't you examine the child in the way I state at the time of this conversation with Mrs. Fye?
A. Not any more so than I did at any other time.
Q. Well, as much so?
A. Yes, I have glanced at the child every time I have seen her.
Q. Why didn't you say so?
A. I did, twice.

Q. And after that conversation with Mrs. Fye, you called again in a day or so to see Mrs. Fye, didn't you?

A. I couldn't say.

Q. What is your best recollection?

A. Why, I had no stated time of calling after I left the case; only when I have been going by there I have called in and had a word with the family about the child, and examined the child's head.

Q. Did you call at the Fye residence on the 21st day of December, until you went there at the instance of Chapin?

A. Had I called there?

Q. Had you, yes, sir.

A. No, sir; I didn't call at the instance of Mr. Chapin at all.

Q. You didn't. Do you say whether—if that you didn't call again after the first talk after Mr. Chapin called at your office and requested you to see the child, and you called and had this talk with Mrs. Fye, did you not in one or two days thereafter call again to see Mrs. Fye?

A. I couldn't say about that.

Q. And did you not then call at the instance of Mr. Chapin?

A. No, sir.

Q. And did you not engage Mrs. Fye in conversation about the settlement of this case, with Mr. Chapin?

A. No, sir, I didn't. Mrs. Fye did with me.

Q. That is it.

A. Yes, sir. Both of them, as far as that is concerned.

204 Q. Then you must have—then whatever talk she had with you must have——

A. (Interrupting.) I couldn't tell which time it was, when I was there.

Q. But then two talks were had.

A. The family have talked with me about that ever since the child was hurt.

Mr. STEWART: The Fye family?

A. The Fye family.

Q. And the Chapin family too, haven't they?

A. No, sir, Mr. Chapin has seen me twice with reference to this case.

Q. Well, that is what I thought. In each instance you went to see Mrs. Fye.

A. No, sir.

Q. You say you did not?

A. No, sir.

Q. Didn't you, as a matter of fact——

A. (Interrupting.) That had no reference to the calls that I made on the family whatever.

Q. Do you recall any time that you dropped in at the Fye residence between the 21st of December and the 14th of April, except those two instances after you talked with Mr. Chapin?

A. Now so far as that is concerned, the time that I dropped in the Fye home, I could not give them, because I don't remember.

They live two doors from me and on my way downtown I have been going down there, I would drop in and talk with the family.

Q. Then you can answer the question.

A. I could not answer exactly what time I went to that family.

Q. Then you can answer the question whether or not you have stopped in to see the Fye child between the 21st of December when you dismissed the case and the 14th of April when you were called there again?

A. Yes, sir. I tell you I had seen the child several times after that.

205 Q. But you said you saw the child twice after seeing Mr. Chapin. Can't you recollect any other instance?

A. I could not say that I had seen the child twice after seeing Mr. Chapin.

Q. You could not?

A. No, sir.

Q. How many times?

A. I couldn't tell you.

Q. Was anything said by Chapin to you about pay?

A. Do you mean about settling with the Fyes?

Q. Was anything said by Chapin to you about pay?

Mr. STEWART: For what?

A. Pay what way? Be explicit.

Mr. BACON: Exercise the same sobriety you wanted us to observe.

The COURT: Let us have no discussion. If counsel have any objections, let us have it.

Mr. STEWART: I object to the question as not intelligible, if your honor please.

The COURT: O, I think the witness can answer it, whether the word "pay" was used or any equivalent to it.

Question read by the reporter.

A. Please be explicit in your question. Of my employment is—if you mean regarding my bill, or if you mean regarding the settlement of the question, I wish you would state it; what you mean by it.

Mr. STEWART: State it both ways.

Mr. GORE: Wait a minute. Probably longer than a minute—before he is turned back to you.

Q. What about the first branch of that?

A. At the time I first saw the child, Miss Chapin, I don't know which one of the family; I think it was Helen; I am not sure, I am not certain about the daughters' names; the daughter was there at the house——

206 Q. (Interrupting.) I am talking about the defendant Chapin.

A. I am getting to it.

Q. Well, come to it now.

A. The young lady said at that time that any expense——

Q. (Interrupting.) Wait a minute. I don't care anything about that—what the young lady said.

Mr. STEWART: I insist that the witness ought to be permitted to answer the question without interruption.

Q. You may state what the defendant Chapin said; I don't want what any other member of the family said. It is not necessary to go into details.

A. Well, very well; when I saw Mr. Chapin the first time after this occurred, Mr. Chapin said that his daughter had spoken to him about taking care of that bill, and he would be pleased to take care of that bill, for the injuries of the child; any injury of that kind, that he would always be pleased to take care of. Re-arding the latter part of the question, Mrs. Fye and Mr. Fye both asked me what I thought the damages of the injury of the kind would be worth.

Q. I am not asking what Mr. and Mrs. Fye said themselves to you. I am asking what the defendant Chapin said.

A. I am answering the question you asked me; what was said——

The COURT: You should not state what Mr. and Mrs. Fye said, unless you are asked. The question is what Mr. Chapin said, and not what they said.

Q. What did Mr. Chapin then say about pay, on the other branch of this question?

A. He said that he hoped it could be amicably settled.

Mr. BACON: Now, we object to any negotiations for a settlement.

The COURT: That would be objectionable, entirely.

207 Q. Now, you understand, Doctor, from what you talked with Chapin that you were in a sense representing him, did you not?

A. Not at all, sir.

Q. And you would accept the responsibility of such a representative?

A. Not in the least.

Q. Don't feel it now?

A. No, sir.

Q. Never have felt that delicate sense?

A. No, sir.

Q. You say you came to Niles about November 3rd?

A. I think about that date.

Q. That was about six weeks before this assault?

A. Just about.

Q. Had you been acquainted in Niles before you came?

A. Only slightly.

Q. Had you been acquainted with the Chapins when this assault occurred?

A. No, sir.

Q. You didn't know them?
A. No, sir.
Q. I suppose you had learned at that time concerning their position in society there?

Mr. STEWART: We object to that as irrelevant and immaterial, what his position in society is, in or out of it.
The COURT: The question is whether he ever learned of it or not. I think he may answer.

Q. Had you learned at that time the position that the Chapins occupied in society at Niles?
A. I had; yes, sir.
Q. You were conscious of that fact, were you not, when you called to treat this injury?

Mr. BACON: Well, sir; we object. That is a part of what we consider objectionable.
The COURT: I think he may answer that question.

A. I don't think I knew anything about the Chapin family at the time I saw that wound.
208 Q. I understand you to answer that when this assault occurred you knew the position of the Chapins in Niles society?
A. I did.
Q. Were you conscious of that position at the time you were treating this injury?
A. Why, no, not perfectly so. I didn't think of the Chapins when I came up there and saw the child's head covered with blood.
Q. No, but the time while you were treating it?
A. No, sir.
Q. I suppose the first suggestion that you had of the Chapins in connection with this case, was when the defendant called to see you?
A. Please state that question again.
Question read.
A. No, sir; Miss Chapin was there the evening of the injury, and I saw her mother a day, or the next day; the next day at the house——
Q. At her house?
A. At Mrs. Fye's.
Q. The defendant was there?
A. Miss Chapin was there.
Q. I ask you about the defendant Chapin. I don't care anything about the rest of the family?
A. You are talking about the Chapin family.

Mr. BACON: You asked about the position of the Chapin family in Niles.

Q. I say now, that it was the defendant Chapin that question refers to.
A. Yes, sir.

Q. Not the family. We are not suing the whole family.
A. You spoke about the position of the Chapin family in that town.
Q. Did you see the defendant Chapin at the Fye residence at any time during your visits there?
A. No, sir; I did not.
Q. Did you ever see him there?
A. No, sir.

209 Redirect examination of Dr. BALDWIN:

Q. You spoke of having some other credentials or connection with some other medical institute. State what you meant by that—what they are?
A. I have a certificate of attendance at the New York post-graduate medical college, also private course of instruction in the Professor Buchanan of Boston, diplomas from the Homeopathic Medical College of Cincinnati, and the opthimatical college.

Recross-examination:

Q. How many colleges is that?
A. Three.
Q. Did you personally attend all those?
A. Yes.
Q. How much time did you spend at the other two besides the Cincinnati college?
A. About four months.
Q. Was that before or after you went to Cincinnati?
A. At the same time. I took the homeopathic special course in one homeopathic school, at the same time was attending the Cincinnati Eclectic school.
Q. Two years and a half embraces all these colleges?
A. Nearly four months in New York.
Q. Four months of that time in New York?
A. Nearly four months, yes, sir—no, sir, besides that.
Q. You got diplomas, I suppose, from all of them?
A. I have.
Q. Did you get a diploma from the New York college in four months?
A. Yes, sir.
Q. Diplomas are very easily obtained, are they not, in a good many medical colleges?
A. Sometimes, yes.

Redirect examination:

The WITNESS: By the way, this is the same college that you are quoting from on Dana and Hammond; I attended both of their lectures.

210 Q. Just name that.
A. New York post-graduate medical school.

Mr. GORE:

Q. You don't agree with your professor about the fright being a chief cause for epilepsy.

A. Not as a prime cause—as one of the causes.

ARTHUR J. ROSSMAN, being duly sworn as a witness on behalf of the defense, testified as follows:

Direct examination by Mr. BACON:

I was 22 the 18th of last August, and I live in Niles and have all my life. My mother is a sister to Mrs. Fye. I have been acquainted with Henry Fye, who is here, for some time. I have known the little girl also—Ruth. She has been at my mother's house, where I saw her before she was injured. I have seen her there before she was injured as often as every three months probably, or such a matter. Have seen her since she was injured; twice or three times since that. I have noticed her here today in court. I have seen her elsewhere than at my mother's house since she was injured. Out in front of the walk and on the walk. I saw her out there once after that. I have seen her in all since the injury probably three or four times.

Q. Has there been any difference as to the nervousness since her injury as compared to what she was before?

A. Not that I have noticed. I remember having a conversation with Henry Fye on Main street, in Niles, near the news stand, last January. I saw him have something in his hand. I couldn't say whether it was a photograph or what it was. He showed it to some gentlemen there—walked in the stairway and showed it to me. In the old American building; the stairway that goes into
211 Beaver's office. I was just this side of it in front of the window at the news depot. He came along down the street after I had started away, and another young fellow, and he overtook me and asked me if I had ever seen this dog—Mr. Chapin's dog. The dog that bit this child. I told him I had. He asked me where I saw him. I told him up in front of our house or in the yard. How often? I told him about twice or three times since that had happened. He said, "If you want to make a tip, just jump at him when he comes in some time and get him to nab at you or chase you." I made no answer.

Cross-examination by Mr. GORE:

I first told of this circumstance in talking it over to home. I first told the Chapins, the other day, since they have been after me to bring me here. I have not had occasion to talk about it since January only at home. I talked about it at home at the time. Since it occurred, in January, until just the other day, when I was subpœnaed here for this trial, I had not told anybody that I remember of. I am lathing now. When they commenced to subpœna witnesses for this trial I did not get a little excited. My memory did

not become very bright. I was not informed by any one that they were sorely in need of witnesses.

Q. What induced you to come forward with this statement to the Chapins?

A. Why, I told it to home and the family—it had got out.

Q. What induced you to come forward and make it known to the Chapins?

A. Why, they had subpœnaed me.

Q. Did they subpœna you without knowing what you knew?

A. Why no? I suppose they knew or they would not have
212 subpœnaed me. I had not expressed an anxiety to have a hand in this case. I had told it to my brother-in-law, George Francis. He was city marshal at Niles. He was never employed in the Niles paper mill. I was never employed there. None of my relatives were employed there.

Q. Before the subpœna was served upon you to appear here had any one representing the Chapins come to have a talk with you to see what you knew——

Mr. STEWART: Wait a minute. I don't care anything about the question, but it is calling for a conclusion of the witness. The witness cannot say whether they were representing Chapin or somebody else.

The COURT: I think he may answer. I think he has already practically answered it, but he may answer it again.

Question read.

A. No, sir.

Q. You had no understanding or arrangement whatever about coming here?

A. Why, yes; I knew about coming here before that. There was a man—Forrest—had come to me at night, just at supper time, and said Mr. Bacon would like to see me. So I put on my coat and went down to see what it was.

Q. Then you have talked with somebody. You knew Colonel Bacon was Mr. Chapin's attorney, didn't you?

A. No, sir, I didn't; not until that time.

Witness further testified that he had not talked with any one but his family as above stated, and, after further cross-examination, admitted that he had talked with Homer Chapin the week before the trial.

EFFIE STEVENSON, being duly sworn as a witness on behalf of the defense, testified as follows:

213 Direct examination by Mr. STEWART:

I live at Mr. Charles A. Chapin's, in Niles, and have lived there since December last. If I remember rightly, I went there between the 6th and 7th of December. I became acquainted with Mrs. Fye while there, the following Monday. That would be somewhere about the 14th. There was another girl working at Mr. Chapin's at this same time, Alice Harcourt. I had occasion to go, in com-

pany with Alice Harcourt, on the evening of December 14th, to the house of Mrs. Fye. We left Mr. Chapin's house in the evening about eight o'clock, and I should judge it was about half past eight or nine o'clock when we got to Mrs. Fye's. We had some difficulty in finding the house. That was the occasion of the delay. I had never been at the house before. I remember the location of the rooms of that house, and would if I could see a diagram of them. The animal we had with us that night was the St. Bernard dog; the one that has been mentioned here in this case. Mr. Fye came to the door. Duke, the dog, went in first. Nothing was then and there said by Mr. Fye with reference to Duke's coming in the house. I was where I could hear. I had never seen Mr. Fye before. We took our seats as soon as we went into the room. From where I sat I could see nothing but the table in the dining-room. There was a red-check table cloth on it, the fringe just touched the floor. You could not see through under the table as to what there was beyond. After we got in the house we found there Mr. Fye and Mrs. Fye and the little child, Ruth. There was something said about drinking beer there that night. We was there about five minutes. Mr. Fye
or Mrs. Fye, I don't remember which, said, "Would you like
214 a glass of beer?" We said we didn't object. Mr. Fye says,
"I will go down and get some." He went down and brought up the beer. He brought up four bottles. He brought two into the dining-room and the other two he said he sat in water to keep it cool. Mrs. Fye opened the bottles and filled the glasses from those bottles. The child was there at that time. Mrs. Fye poured out some in the child's mug, and Alice says to her, "Aren't you afraid to give the child beer?" She said, "Oh, no, the child is very fond of beer; she has already had three mugs, before you came." I noticed something peculiar about the child's face and eyes at that time. Her eyes looked very bright—very bright indeed. Those two bottles were drank up that night and one more was brought in, and if I remember right, I think it was drank. I don't know whether the child had any out of the third bottle or not. I don't remember.

After we came in there and was seated, the dog went right into the sitting-room and remained there for quite a while. He laid down right alongside of Alice, right at the doorway going into the dining-room. There was quite a big coal fire in the stove that night. Alice said, "Ruth, why don't you come and pat the dog?" She said, "No, I am afraid;" and Mr. Fye said, "Oh, yes, Ruth, he won't hurt you"—and the child patted the dog on the back. The dog went into the dining-room first. I guess it was five minutes after the dog had gone into the dining-room before the child went in after it. I did not notice where the dog went when he went into the dining-room. I did not notice which way the child went. It was not long after the child went into the dining-room before we heard
a scream. It was about a couple of seconds, maybe three or
215 four seconds. Mr. Fye could not see through the door into
the dining-room from where he sat. I saw that night in the dining-room the sewing machine.

Q. What do you say as to whether Mrs. Fye could see the child, the dog or the sewing machine from where she sat in that room that night while you were there?

A. I didn't see how she could see them, because she was over between the bed and the dresser. After we heard the scream everybody rushed out into the dining-room, and Mr. Fye threw up his hand and hollered, "That is what I looked for all the evening; I expected it; this isn't the first one he bit; I will sue Charlie Chapin,"—and he cursed up and down like a maniac, and said he would sue Charlie Chapin; and repeated it all the evening. Mrs. Fye said, "Well, Henry, if you expected this, why didn't you put the dog out?" Mr. Fye went out and brought in Mr. Berge; I didn't know where he went. First he went out, then he went over to Mr. Berge, and Mr. Berge came over; he was there for a while and then Mrs. Berge came over; quite a while after Mrs. McMichael came out. I don't remember which one was there first, Mr. Berge or Mrs. McMichael, but I think Mr. Berge was there first. I remember of the doctor's coming. I was then there. After the accident I remained some time; it was half past 11, maybe 25 minutes to 12, when I got home. That was the first time I had seen the child.

Cross-examination by Mr. GORE:

You understood me to say that I was still employed by Mr. Chapin. I have been employed by him ever since I went there in the first of December. I had formerly lived in Chicago. That is my home. I have lived on all sides; now I have no home. I lived with some friends of mine; it was on the West Side. I was
216 living in Chicago before I came to Mr. Chapin's—on the West Side, 251 Walnut street. That runs the same as Madison. I think it is three or four blocks north of Madison. It does not touch Michigan avenue. I lived there only about two months; then my friend moved to Fulton street. I lived there with a lady friend of mine. She had no family. Her husband worked for the Grant chemical works. She had no family if she did have a husband. The house had four or five rooms; we ladies were living there together. I don't know how long my friend had been living there; I didn't ask her. I had known her before I went there. I went to school with her in Peoria, Illinois. I lived in Peoria four years and a half. I had lived four years and a half in Peoria, but my home was in Chicago; I lived there twenty years after the—with the four years and a half that I spent in Peoria. I resided in Chicago, since I returned from Peoria, about seven years. My family was not living in Peoria. I was not there on my own hook. No, sir. My family was living in Chicago. I was born in Chicago. My parents are not living. Before I lived on Walnut street, I lived with another lady friend of mine, Mrs. Duprey, a Chicago lady. I met her, the first I remember of, a year ago this last winter. I lived with her from April until August; 1251 South Poling street. She had a husband and two sons. I was working in the laundry,

and I was boarding with her. I was working in the Brighton laundry. This laundry is in an alley, off of Madison, and back of Center avenue. I lived, before living at this last place in Canada. I had been in Canada—I didn't mean to say I spent all this time in Chicago; I made a mistake; I meant to say, that I was four years and a half in Peoria; two years and a half in Canada. I have an aunt living there, that I lived two
217 years and a half with. I arrived in Chicago, and went to Mrs. Duprey's. I lived in Canada with my aunt, in Port Hope, Ontario. I had been there two years and a half. I was not doing anything while in Canada. Immediately preceding my residence in Canada, I lived at home, on the South Side, Indiana avenue. I lived there about seven or eight years, I should judge. While on Walnut street, I was there to Peoria, in a boarding school, sent there by my parents. It was St. Mary's academy; a private institution. During that four years and a half I lived there steadily all that time, only when I went home in vacation, and that was from June to September, in the summer time, and two weeks at Easter, and two weeks at Christmas. I came to get acquainted with the Chapins, through an employment lady, a Mrs. Ellis. She lives at 614½ Madison street. I listed my application there for a job. I did not make an application for any particular kind of work. I didn't then know Alice Harcourt; only the time I met her in Mr. Chapin's. I did not know her in Chicago, and not until I went to Mr. Chapin's. I don't say that I have a very distinct recollection of all the events of my life. My memory is perfectly reliable in this case, because I have occasion to remember it.

I am not willing to swear that Mrs. Fye could not see from her position—see through the door; but I don't see how she could have seen. I don't say she did not. I won't swear to it. My recollections of the house and its dimensions and its rooms, were all gotten that evening; I was never in the house before or since.

After the dog bit the child, we went up after Miss Chapin and brought her down. I don't remember exactly what time it was when the dog bit the child. I did not see it. I don't know
218 who was first to the child. The excitement had commenced; everybody rushed out; I don't know who took up the child. I don't know anything about it. I did not pick the child up. I knew Mr. Fye's arm was injured, at the time. He was carrying it in a sling. He kicked at the dog and missed him. He did not have the child in his arms when he kicked him. No, I guess he didn't pick up the child. I was very much excited. I don't remember all that occurred.

Q. Now, I suppose that you have discussed and rediscussed this incident many times since?

A. No, sir.

Q. Now, there was a good deal said right after the injury, wasn't there?

A. There was nothing particular; nothing very much said to me about it.

Q. I suppose when you got home at Chapin's you were inquired all about how it happened?

A. No, sir.

Q. Not a thing?

A. She asked—but I was not inquired all about it.

Q. You were not inquired all about it?

A. No, sir.

Q. Just give a brief account of it; I assume——

A. That is all.

Q. Haven't you been asked about it since?

A. No, sir.

Q. Sure?

A. No, sir. Mr. Chapin spoke to me once in the kitchen; he asked how it happened; we told him as far as we knew of it, and that was all.

Q. And the subject has never been brought up since?

A. No, sir; until here lately before the trial. I never spoke of it. I didn't say anything about it since that time.

Mr. Chapin was in Chicago at the time this occurred. He got home the next day—evening. The next evening. I don't
219 remember whether it was that evening or the next evening after his return that I had a talk with him about the accident. Alice and I have talked about it between ourselves there at the house—she was there until January. About the 6th or 7th of January. I was not told to keep it quiet by any one. I only had half a glass of beer. I am sure about that.

Q. The child appeared bright, did she not?

A. Yes, sir.

Q. Was a bright child, wasn't she?

A. I don't know; I never had seen her; she was that night; she was very bright that night.

Q. If, then, she had five mugs of beer, evidently the five mugs of beer had increased rather than decreased her brightness?

A. I suppose it did.

Q. And she was probably stronger and more vigorous and had better control of herself than she would have had without the beer?

A. Yes. I don't think that the amount of beer I had that evening at all interfered with my recollection of things. I did not drink much beer to speak of. I never drink at one time more than five or six glasses of beer. I never drink beer. That was not the only time; but it is not very often that I drink beer. I am still in the employ of the defendant here.

Redirect examination:

I never saw the construction of those rooms until that night, and have never seen them since. After this accident happened I did not say to Mr. Fye, or did Alice say in my presence, "Don't shoot the dog, Mr. Chapin is rich; sue him and make him pay." Nor anything of that kind, nor words to that effect. There wasn't a

word of that ever spoken that I know of. No such conversa-
220 tion was carried on in my presence. As to what beer the child had had before I came there, I saw two bottles. I took that from Mrs. Fye. She told me that she had three glasses of beer. I am twenty now.

Recross-examination:

I have not talked with any doctor. Nobody suggested to me that in view of certain medical questions likely to be raised here, it would be a good thing for me to say that the child had a good deal of liquor.

Mr. BACON: Defendant's counsel requests that it be noted that Alice Harcourt's testimony is the same as to the occurrence at the house of the Fyes on the evening of the accident that this witness's is; that being the terms on which the continuance was had.

Mr. GORE: No objection.

The COURT: Very well; it may be so considered.

Mrs. ELLA BERGE, being sworn as a witness on behalf of the defense, testified as follows:

Direct examination by Mr. BACON:

I was forty-seven years of age last March. My husband's name is Henry Berge; he is in the employ of Mr. Chapin, in the Niles Paper Company. Mr. Chapin is largely interested in that company. He has been in that employ I guess about ten years; maybe nine years; I don't just know. I live diagonally across the street from Mr. and Mrs. Fye, on the next corner down in the northeast corner. I know this little child Ruth. I think I have lived there nine years this fall. The Fyes have lived in the present place ever since little Ruth was born. I don't know how often I would see her.

Mrs. Fye has talked to me about the child having worms,
221 but I—she has talked to me at different times and of course I never paid enough attention to them to know when the times were, because people talk about their children; they don't have to know when it was. I heard Mrs. Fye say that she told Mr. Fye to get the child some worm medicine; and it seems that she told him about the one kind and he got another kind, and she took the bottle down off a little shelf and showed me the bottle, and she had told him to get, I think, vermifuge, and he got another kind of worm medicine; I don't remember what that was.

Since the injury this little child has been at my house. She has not been living there; Mr. Fye came there and wanted to know if she could stay there in an afternoon when he was attending the Young Men's Christian Association; but I don't remember—I don't believe it would exceed three or four afternoons—the most. The mother was working at the mill. That was since the injury. I remember of them saying the child had the measles. I didn't see her while she had the measles. It was before she had the measles that she was at my house. I don't remember how long. I could no

say how often I had seen the little child before she was injured. I could not just tell how often; I would see her about—of course I would see her across the street, when she would be out on the porch or anything, of course, when Mrs. Fye worked in the mill; I didn't go over there to see the little girl. I had been in the habit of visiting Mrs. Fye. I would run in there, once in a while, of course, when Mrs. Fye was at home. I observed the child on these different occasions. I have had nine children and five of them are living. I did not see anything different in this little child, as to nervousness, after three or four weeks after the injury than she was
222 before. I could not notice anything; she may have been, but I could not notice it. I was called to the Fye house at the time of the spasm, about the 14th of April. Mr. Fye came to the door and said that Ruth had a spasm, and for me to come over; I just ran right over. Mrs. Henry Moore was there and Mrs.—she was assisting Mrs. Fye. They had her feet in water when I got there. There was no one else present then. Mrs. McMichael came after that.

Mrs. Fye, when I went in, showed me this fork; she picked it off of a little shelf; she said, "I told Mr. Fye to bring me something to put in her mouth," she says, "and he brought me the butcher knife; then he went back and got this fork;" she said, "I remember of my mother putting a fork in my brother's mouth when he had spasms"—so that was the first thing she thought of. She said, "She would have chewed her tongue if she hadn't put a fork in her mouth." I didn't see any stain of blood. The child was awake; of course I didn't notice. She wasn't talking then. She talked while the doctor was there. I staid until after he went away. The doctor came pretty quick after I got there.

I remember one little thing that the child said, while the doctor was attending her. I remember that because it was kind of cute; that is what makes me remember it; I suppose—the doctor was telling Mrs. Fye what she should do for the child; to bathe her every fifteen minutes, and to do all those things; he left there the medicine; and she looked up in the doctor's face and she said, "Well, she will do nothing of the kind." Of course I remember that because it was cute. She is a bright, quiet little child.

223 Q. Now, about the child's intelligence; has there been—is her intelligence any worse—or been any change, lost its mind—they tell us its mind is utterly lost—do you see any signs of such things?

A. I never have seen any signs of it. She might have, but I have never seen it.

Q. Had the child appeared for the last three or four months about as well as she does here, excepting the time that she was temporary——

A. (Interrupting.) She had the grippe and when—this winter she was sick then.

Q. Do you know of her having the grippe this winter?

A. Yes, sir.

Q. Was that after she was injured?

A. Yes, sir; it was after she was injured by the dog. She had the grippe. Mrs. Fye had it, too. I don't remember how long after she was injured by the dog that she had the grippe. I don't remember either if it was before she had the measles, because I remember of Mrs. Fye telling me that she had the grippe and that she had such a cough—she coughed and had the grippe; that is all. Of course when Mrs. Fye was to work the only time Mr. Fye left her with me—I didn't see her so often. I couldn't say whether this grippe was before this spasm, before the 14th of April or not. I would not want to. At the time of the spasm I remember talking with Mr. Fye about the measles or how long before the measles; it was three weeks from the day of the measles. I said that she had the measles about two weeks before that and Mrs. Fye said, "No, it is three weeks today since she had the measles—since she came down with the measles."

Cross-examination by Mr. GORE:

I was in Mrs. Fye's house when she said the child had the
224 grippe; it seems to me it was in the evening. I couldn't say what month, but it was along in the spring, I think. I couldn't tell if it was after she had the measles. It might have been; it might have been before she had the measles; but I cannot remember. I remember Mrs. Fye telling me that she was sick and the baby was sick, and the baby coughed while I was in there, and Mrs. Fye looked very bad. I don't know how long it was after she told me the child had the grippe, before she had this spasm. I could not tell anything about it. I don't remember having talked with Dr. Baldwin about this case.

HENRY BERGE, being sworn as a witness on behalf of the defense, testified as follows:

Direct examination by Mr. BACON:

I am in the employ of the Ohio Paper Company, where Mr. Chapin is president of the company. I have been in the employ of that company in the neighborhood of nine years, and am in its employ now. I am the husband of Mrs. Burge that has just been sworn. The distance from my house to Dr. Baldwin's house, as near as I can tell, is somewhere near twelve rods. I live diagonally across the street from Mr. Fye; across the railroad; the railroad runs on the street. The name of that street is Ninth street. I have been acquainted with the Fye family ever since this little child was born. The Fye family have lived in the house diagonally across the street from me, I should say, nearly five years; somewhere near five years. I saw this little child before she was hurt in December last by the dog, every day, or nearly so. I passed the house every day. I have seen her since when she has been up and about, very frequently.

225 Q. Can you see any difference in the nervousness of the child before the bite and afterwards?

A. Well; I don't think I can, no. I say no, I cannot see no difference in her. I think she is just the same as she was.

Q. When she has been up and about?

A. Yes, sir. I was present at the night of the injury. I wasn't present at the time of the injury. I went in soon afterwards. I came in. I think I was the second person only the ones that were at the house that was there; the second person that was there I think, Mrs. McMichael—the lady that lived in the house came in before I did. I would not be positive whether she was in before I was or not, but I think she was. Henry Fye came for me. There was quite a good deal of excitement there about that time; I don't know—I kind of wanted to see how bad the child was hurt; I kind of looked around and tried——

Q. Oh, did you hear Mr. Fye say anything; did he make any expression at that time?

A. Well, he said quite a good deal. He was raving around, he would like to have a gun to shoot the dog. That is the worst what he said; he would like to shoot the dog; if he had a gun he would naturally go and shoot the dog. That was his general cry about that time.

Q. Did you hear him say anything about what he had expected, about whether he expected anything, while you were there?

A. No, the simple thing with him, he was bound to kill that dog; that was the important thing he had; and he walked around the floor the biggest part of the time, back and forth, and I heard him say, generally, "I want to kill that dog; by all means the dog must be killed."

226 The doctor came very soon after I got there. I should think it was, say twenty minutes maybe, or fifteen or twenty minutes, somewhere along there. I don't know as I could tell how long he came there, and he went into the sitting-room where Mrs. Fye—I don't think the child said anything. I think she had her senses all right, so far as that is concerned; that is after the doctor came, I don't think I heard the child speak any, but I don't think it did. No, I think the child laid on its mother's lap and they kept wet cloths on its head. I don't think the child said anything until after the doctor came the second time. When the doctor came the second time she spoke.

She said that—they asked the child if she wanted to go to sleep; that is, after he was there the second time, when he got ready to sew up the wound; she said "No, she didn't want to go to sleep; she wanted to stay awake." That is about what she said. Then they laid her on the bed—we laid her over on the head of the bed, in the first place, she was laying where they wanted her, I presume; and they laid her down at the foot of the bed, and she finally—well, she said, "I will go to sleep;" and they coaxed her to go to sleep like any child; well, she said "All right. I will go to sleep." And they gave her chloroform, and she went to sleep. Her face was washed while I was there by some one. I held the lamp.

When we got the child under the influence of chloroform, why, the doctor washed and shaved the place that was the wound; he

washed that and shaved it; and this lady that came with him from the drug store, or the hospital, she gave him the chloroform and he washed that all off there cleanly, and the hair shaved off bare, shaved it off with a razor; then he went to work and sewed
227 up the wound very nicely and very pretty; it looked very nicely after he got it sewed up; then he went to work and washed that child's head and hair back here, and her face, and squared it around very closely; I don't think he found any other mark upon the child at all. That was my supposition. I held the lamp. I didn't touch the child at all. I didn't see any wound; but they spoke about it that there was no other mark. I looked in particular to find out whether there was another mark. I did not look at this eye. I didn't see nothing but that was all right at that time. I was not there at the time of the spasm. I have been in Mr. Fye's house since that in the evening for a minute or two, then I was away again. I work very hard every day; and in the evening or in the morning I would see her out; but at no other time; I don't go nowheres never; I work pretty near every day. There was there in the house the evening of the injury while I was there two girls from the Chapins, domestic girls there; they were there; I think, the lady that lived in the house, and my wife was there. That is, my wife came after I was there, and the doctor and that nurse from the hospital; Mrs. Fye and Mr. Fye, and I believe that was all that was there. That was all to my recollection, that was there.

Cross-examination by Mr. GORE:

I say that the only wound that I discovered myself was on the head. Mr. Baldwin spoke in particular; he said, "I guess that is all the wound there is." I am sure about that. I remember it perfectly well. I did not hear the doctor's testimony yesterday; I heard a part of it. If the doctor testified that he discovered other wounds, then I would say I was mistaken. I would not say the doctor was mistaken.

228 Mr. Fye said, Shoot the dog; have a gun to shoot the dog. I told him in this connection that the dog would probably—he had better not do anything about killing the dog; he had better take care of the child.

Q. Mr. Berge, did you, or did you not, say at that time to Mr. Fye: "Let the dog go, and sue Chapin; he is worth it," or words to that effect?

A. I never told no such thing as that.

Q. Didn't you say, "He has plenty of loose change, let him pay for it"?

A. I might have; he could get more money out of him than by killing the dog.

The dog never made no assault upon me, because he never had no chance. I didn't know anything about his biting Mr. Lambert's little daughter, nor the Exner boy, nor the Chambers boy.

He is a big, nice dog. We all admit he is a nice dog. I ain't in

love with him particularly. In dressing this wound the doctor cut the hair off first, with the scissors; then shaved it nicely; and then washed out the wound very nicely. I should say it was about thirty minutes from the time the accident happened until he commenced to treat it. He lifted up the loose scalp in cleansing that wound. He done it with his hand—with his fingers—thumb. It is a pretty hard question to say just how far back he drew it. I think three-quarters of an inch. He did not take it any further back than the dog had cut it. No further than it was naturally cut. No further than the natural wound. After doing that, and washing it out he put down the piece of torn scalp in its place and then he sewed it up. I have told all that he did before he sewed it up, as near as I could—there might be some other little things that the doctor does, that I ain't professional enough to know. I
229 don't profess to be a doctor, or no professional man. I am not working for Mr. Chapin. I am working for the Ohio Paper Company. Mr. Chapin is the president of it. I was right there and saw the wound. I don't think he cut out some parts of the flesh. I did not watch closely. I was a little excited. I never examined the child about its nervous condition.

Mrs. ADA MOORE, being sworn as a witness on behalf of defense, testified as follows:

Direct examination by Mr. BACON:

I am the wife of Henry Moore. I live a neighbor to the Fye house, where Mr. and Mrs. Fye and this little child lives. I have lived there five years. I have two children of my own. One eleven and the other five. This little Ruth played with my child. For the past six months it has been common. Ruth has been in my house when she has been up and about; that has been common. I knew the child before she was bitten by this dog, as alleged. I have seen her frequently since. I have not noticed any difference in her nerves, as to her nervousness, before and after she was bitten.

Q. Do you know anything of her habits, as to the regularity or irregularity of her eating; say this spring?

A. No, not uncommonly.

Mr. GORE: The question is, Do you know anything about the regularity of her eating?

A. She has ate at my house two or three times and pieced between meals there.

Q. I asked Mrs. Fye in relation to speaking to this lady about worms. What has Mrs. Fye said to you on the subject of this child having worms, if anything?

230 A. She said she thought she had worms. I observed the child myself. I saw her when she was not feeling very well—has a slight fever.

Q. Did you judge of the case from your experience with children?

A. I judged it was worms. That has been the case for two or

three years. I know of the family having the grippe there. When the mother and child had the grippe, I went there; they were both in bed. It was in April, I should think. I was present right after the child had a spasm, there in April. When I was there Mr. Fye called me at the time of the spasm. When I went in, I found there Mrs. Fye and the child, alone. The child said something after she came out of it. I don't remember what she did say. I think it was something intelligible. She was not conscious when I first went in. Her eyes were set and she lay there as if she didn't know anything. When she came out of it she turned around and around, and I think she commenced to talk. She was not making convulsive motions when I was there. When I first went in, she was lying perfectly still. I saw no struggles at all. The first indication of consciousness was, she rolled her eyes around, and then she turned her head; I was there about twenty minutes, I think. She did not go to sleep while I was there. The doctor came as I left. From the time she first showed, or made motions, until I left her, there were no signs of returning unconsciousness. I did not see the fork. The mother said she held a fork handle in her mouth.

Cross-examination of Mrs. ADA MOORE by Mr. GORE:

Q. Mrs. Moore, do you remember at two days after this convulsion, which you say that you came into Mrs. Fye's house
231 with your little girl, when she was nursing Ruth, and she told you she had just had another spasm?

A. She said she thought that she was going into another spasm. She did not tell me she had just had another spasm.

Q. You don't remember it that way. And didn't she tell you it was not so hard as the one you saw, and tell you about her talking about the dog?

A. She said she waked up out of her sleep, crying, "Take that dog off of me."

Q. At the same time she told you that, Mrs. Moore, do you recollect her telling you anything about her having a spasm, or something in the nature of convulsions—in the nature of a spasm?

A. No, sir. I did not see the child froth at the mouth.

Q. How long had the child been in the spasm when you got there, do you know?

A. Why, not but a few minutes. The child remained unconscious after I got there about ten minutes.

Redirect examination of Mrs. MOORE:

Q. Did the mother say anything to you about the child frothing at the mouth on that occasion?

A. I asked her afterwards if she frothed at the mouth, and she said no. "I didn't see the child biting the fork. I saw her (Mrs. Fye) holding something in the mouth. I didn't notice particularly; I was bathing her feet. She spoke of it afterwards that she bit on the fork." I noticed and thought on that occasion the child was in

a fever; her face was very red. I have noticed the little child here this morning in court. This is a fair specimen of how she has been as to nervousness, and is a fair indication of her usual way of acting. She is usually around, playing quite a good deal when I saw her at home. As to nervousness and excitability, this is a fair indi-
232 cation of the child's condition since I have known her, since her birth.

Recross-examination of Mrs. MOORE:

I have seen the child in sickness and in health. I am willing to testify that she said she and Ruth both had the grippe.

Mrs. MARY M. SMITH, being sworn as a witness on behalf of the defense, testified as follows:

Direct examination by Mr. BACON:

I live on the corner of Ninth and Broadway in the city of Niles. I have lived in Niles twelve years last February. I am a neighbor, living in a house neighboring to that of the Fye family, just one block away. This little child has been left at my house. I can tell the dates. She was left there Monday, the 8th of May, on Wednesday afternoon, the 10th day of May. The occasions of her being there were her mother was working at the mill; she wanted me to take care of the child. I had known the child from her birth. It happened that I saw her and knew her. I went to see her, and she had been to my house; that was a common occurrence.

Q. Now, you state whether as to this nervous affection of the child, have you noticed any difference in her condition before she was bitten by the dog, December 14th last, and since when she has been up and about.

A. Well, I never noticed any nervousness any more than when she was at my house; the lady opposite had a colored man spading, and she came in and acted a little nervous then; and also when there was a dog run through the yard she was a little nervous at
233 the time; but she has never been a nervous child. I have noticed the little girl here in court. As to her appearance and mode of action here compared with the way she has acted about all her life, of course when she is at home she is more playful; that is all I can see. I have noticed this little child's eye. I have noticed little ailment on it. The first time a year ago last May.

Q. Who did you speak to?

A. Mrs. Fye herself; it was at her house.

Mr. KNAPPEN: I move to have that stricken out. There is no foundation laid for it.

The COURT: That should be stricken out.

Mr. BACON: The child is here; will you please let this lady see the little child?

Q. Have you noticed that?

A. Yes, sir.

Q. How does it compare with what it was?
A. It is just the same; only it was a little larger a year ago.

Cross-examination by Mr. GORE:

Q. Just one question, Mrs. Moore—if the knot on the eyelid of the child was there one year ago, and is there now, it was presumably there on the 14th of December, or 16th last, was it not?
A. That is more than I can say. I presume it was. It has been there every time that I have saw the child for the last year.
Q. And if there at that time, a physician that examined that child for injuries would undoubtedly have discovered it?
A. I don't know anything about what the physician did. I wasn't there with the physician.
Q. We will lay the physician aside. Any person examining that child to discover any injuries would run onto that?

Mr. BACON: I object to that; it is a medical opinion. I object to it.
234 The COURT: No, I do not think that would come within the category of expert opinion. She may answer it.

Question read by the reporter.
A. Yes, sir; if they had any eyes at all they would see it.

Mrs. ADA MOORE, being recalled for further examination by Mr. Bacon, testified as follows:
I have noticed this child's eye and the little ailment on the eye, or under the eyelid. I have not noticed it here in court since she has been here. I did not notice it yesterday. I wasn't here then. (Witness examines eye of child.) I notice that now. I have known of that being there since last summer. It was about the same last summer that it is now.

Recross-examination:

I think it was in the early part of last summer that I first discovered it.
"I first discovered the lump on the child's eye last summer. I have not watched it carefully. There are quite a number of children on our street, and I see a great many. A physician who should fail to discover that lump would make rather a careless diagnosis."

HENRY MOORE, being sworn as a witness on behalf of the defense, testified as follows:
I am the husband of Mrs. Moore that has just been sworn. I live in the house neighboring near to the house of the Fye family, about six rods, I should think, from them. I have known Ruth Fye since she was born. She has been at my house frequently. I have
235 noticed her here in court today. Her present condition as to nervousness appears to be what it ordinarily has been ever since I have known the child. About the same as usual.
Q. How did her condition as to nervousness before she was in-

jured last, the 14th of December, and since that, when she has been up and about—how have they compared?

A. I have not seen any difference.

No cross-examination.

SARAH KANTROWITZ, being sworn as a witness on behalf of the defense, testified as follows:

Direct examination by Mr. BACON:

I reside at Ninth street, Niles, within a block of the Fye family; the second house on this side of the railroad track. I have known this little child Ruth ever since she was a child. I saw her occasionally; almost every day, out playing around. She has been left with me. I had the charge of her one whole afternoon, and my aunt had her two or three afternoons, parts of the day, living in the same place near me. I think it was after the 14th of April I had her. I didn't keep track of the date, but I think it after; it was the latter part of April that we had her. I had some trading to do that afternoon; I took her with me nearly the whole afternoon; I gave her some toys to play with while I was getting ready; after I was ready she went with me.

I noticed her when a dog was about on one occasion; we passed several dogs on our way downtown, and we came around by the hospital and stopped there and came home. When she saw a dog she didn't seem to pay any attention to them. I didn't no-
236 tice. I saw her in contact with a dog at one time in our back yard that afternoon; she and I were out in the back yard; we were going to put up the hammock, and Dick Cutting's large dog came into the yard, and she and I both patted it; she didn't seem apparently to be afraid of the dog. The child has not manifested any more nervousness since the bite of the dog than before. I have not noticed any change in the child whatever. I have noticed the child here in court. She acts about the same to me. Of course when she has been home she is more playful, more active. I don't see any change in the condition of the child whatever, since she was hurt. I know of her having a little mug. I have seen one at the house, that she uses at the table. It is a metal cup; I don't know anything about it, but it looks as though it might be something like oxydized silver. I don't know what it is made of, it may be tin for all I know. I have seen it in the house off and on quite a while ago. I have not seen it recently, because I have not been over there during meal time at all. I first remember of seeing it there, perhaps a year or more ago. I should judge it would hold about one-half of an ordinary tumbler; from one-half to three-quarters.

Cross-examination by Mr. GORE:

I think I saw that last about a year ago. Of course I didn't keep track of the time. I don't know whether any such mug is in existence now, or whether any such mug was in existence last Decem-

ber. I have not been at the home during meal times for some time, so I cannot remember when I last saw that mug; but I remember seeing one there.

Ruth and I were patting this big dog one afternoon she
237 was left at our house during the latter part of April; I don't remember the exact date. I had charge of her all the afternoon that day. The business I am engaged in is teaching in the district schools, around Niles. I am not teaching this spring. I have been employed in the plate-room in Niles. The plate-room belongs to Mr. French's department. The kind of industry I am at work at there and the kind of product they turn out of the mill is paper-pulp plates. I was not trying to test the child in this. I had no such intentions whatever.

Q. How frequently have you seen that child?

A. Oh, I saw her almost every day. We are right in the neighborhood. I do not know as I can tell within six months of when I saw her give the child medicine and use the mug. I don't remember what other dishes they had there. I don't know how many mugs were on the table; nor how many tumblers; nor how many plates. I don't know whether they had a castor or not; nor sauce dishes; nor saucers. I don't know the color of the table-cloth; nor how many chairs were at the table. I know that I saw the mug.

Mrs. SARAH ROSSMAN, being sworn as a witness on behalf of the defense, testified as follows:

Direct examination by Mr. BACON:

I am thirty-six years of age. I am a sister to Mrs. Fye. I had brothers. Their names were John. He is dead. He was home in the winter time when he was studying shorthand writing; he seemed to have a cough, and with that there was a bronchial trouble, something of that kind, and he went to a fire—the cooper shop burned in the next yard to us—and my husband's tools were
238 there; he got wet from the water and he came home and had what was supposed to be pneumonia. One of his lungs was very much swolled, and that was the cause, we considered, of his death.

The next brother was David, next oldest. He is dead. He died with catarrh of the throat, we thought. He went out West, and came home on the front of the engine; took a very severe cold, and that caused him to die with what is called throat trouble; it seemed to go down into the bronchials. That is what is called quick consumption.

The next one was William; he is dead. When he went to the State of Maine with Mr. Lary, he had a swollen throat, caused by catarrh; it was very much swollen; and it being so cold there, the climate didn't agree with him and he died; we didn't know but what it was the same trouble that he died from.

Another brother, Joshua, is dead. The doctor called it a clear case of consumption, because he was dissipated and abused himself,

keeping late hours, so *and* he had the grippe four different winters, and impaired his health so it went to his lungs.

There was no other brother. There is a relative in the asylum now, living. He is my father's nephew; his brother's son. His name is Dennis Flynn. He has been in the asylum several years; I cannot really tell how long. It is a good many. They call it insanity or softening of the brain. When he was a youth, growing, he worked at the cooper shop, and there is a cider mill connected with it, and he became a very great lover of hard cider, and we thought it injured his brain.

Cross-examination by Mr. GORE:

My age is 46 instead of 36—pardon me.

239 Mrs. HANNAH FYE, being recalled for further examination by Mr. Bacon, testified as follows:

Dr. Smith never did anything for the child's eye. I have no recollection of anything of that kind. Dr. Smith could not testify to it himself. Nobody ever touched my child's eye until Dr. Baldwin.

Q. Do you remember Mrs. Smith, the lady that was just sworn, of telling her about a year ago——

A. No, I didn't.

Q. (Continuing)—at your place that you were going to have Mr. Smith do something?

A. That was in regard to my own eye.

Q. Nothing about the little child?

A. Nothing about the little child at all. There was never no operation performed on her eye, or examination, until Dr. Baldwin and this doctor here. Mrs. Smith has got that turned around. It was my own eye. You remember that, Mrs. Smith; you recollect it was my own eye. You are mistaken about that.

Q. I just asked you, if you remembered telling her about it a year ago, that you were going to have Mr. Smith operate on this eye?

A. On the child's eye?

Q. Yes.

A. No, sir; I did not.

Redirect examination:

I remember Dr. McNair, when on the stand, calling attention to that little spot on the upper lid of Ruth's eye. Dr. Smith's attention was never called to her eye in any way. I don't know whether my husband called his attention to it or not. I don't know anything about it. It was my own eye that Dr. Smith operated on.

240 Mrs. ADA SMITH, being recalled for further examination by Mr. Bacon, testified as follows:

I had a talk with Mrs. Fye about a year ago last spring, about the little child's eye. I saw the little red bunch on her eye, I says

to her, "Mrs. Fye, ain't you afraid that is a cancer?" She says, "I have been thinking it was a wart, and," she says, "as soon as I feel able, I am going to take her to the doctor." If it was Mrs. Fye's eye it must have growed terribly since a year ago this spring. That was a year ago this last May.

Recross-examination:

I am in ordinary health this morning. I had a little trouble with Mrs. Fye, over the payment of a dress; because she didn't want to pay me what was my due.

Mrs. ELLA BERGE, being recalled for further examination by Mr. Bacon, testified as follows:

I noticed this little child's ailment of the eye, or eyelid. I have noticed it since she has been in court here. I have noticed it from my seat. I have not examined it.

Q. How does it compare to what it has been?

A. Well, I don't know as I could tell. It seems to be just about the same. I always thought it was a stye. Mrs. Fye has always said it was. I couldn't tell you when I first noticed it. She draw-d my attention to it herself. I knew of its being there a year ago—as much as that. It must have been a year ago, because it was herself that drawed my attention to it—she spoke about it.

241 Recross-examination:

What I have seen from my place sitting here today, I could not tell whether that little wart or knot was on the upper lid or the lower lid. I say I have not noticed. It was Mrs. Fye that drawed my attention to it.

Redirect examination:

When I came there at the time of the spasm, April 14th, I noticed the child's appearance; she had a fever; her face was red, and the doctor said she had a fever.

Dr. FRED R. BELKNAP, being sworn as a witness on behalf of the defense, testified as follows:

Direct examination by Mr. STEWART:

I live in Niles; I am 35 years of age. I have been a practicing physician since 1888 at Niles. My father was a physician before me. He is alive. I have not claimed to be a specialist in any line. I know Mr. Fye and his daughter Ruth. I know in my knowledge of medicine and diseases something about such a disease or subject as epilepsy.

I graduated in my medical course at the Bellevue Hospital medical college, New York city; also at the Hygienicologic Institute at Berlin, Germany; the London School of Gynecology in connection with the Soho Square, London; also have diplomas from Dr. A. Martin of Berlin, who gives private courses.

Epilepsy is a disease manifesting itself by explosions of the nervous system.

Mr. GORE: "Explosions of the nervous system?"

Yes, sir; that is the word I used. I don't know but per-
242 haps I had better change that expression and say that it is a disease, as you may call it, nerve explosions, or explosions of the nervous system, attended sometimes with and sometimes without spasms; but always with unconsciousness. The older authorities are very vague in their assignment of causes for epilepsy. Among those ascribed by the older authorities are disease of the kidneys, lungs, trauma, of any character—nervous shock; and hereditary taint. The newer authorities are gradually eliminating a great number of these; although they acknowledge that all these diseases, or all these diseases and injuries also including some diseases of the intestines, may be and are exciting causes; that nevertheless heredity is, if not a necessary, at least a practical universal factor in this production of epilepsy. Heredity, I think, is considered the most potent of all causes.

Q. What is the effect, when it is manifesting itself upon the nervous system—how do you tell?

A. I would divide my answer to that question into two parts. The effect upon the nerve centers is simply as a blow, depriving the person of consciousness; that is the effect of the spasms. The effect upon the mental condition of the person is very variable. There are cases, many of them recorded, in which it seems to have no bad effect; in fact, it has a good effect. Cæsar and Napoleon are both said to have suffered from epilepsy. There are also many cases in which it does affect the nerves—affect the mind profoundly for the worse.

Q. Doctor, is there such a thing as "nerve center" in the system?

A. There are several classes of what might be called "nerve centers" in the system. The principal nerve center is located in the cranium, commonly known as the brain. I should say the
243 brain must be affected either directly or indirectly before we could have epilepsy.

Q. Is there any difference between a spasm and a convulsion?

A. A convulsion is generally used to designate a series, or at least a profound state of spasm. There are many sorts of spasms or convulsions attended with various degrees of convulsive movements and other evidences of profound shock to the nervous system.

Q. Are all spasms of an epileptic character and nature?

A. The later authorities give us to understand that although the spasms of infancy are generally considered innocent so far as their permanent effects are concerned, and are produced by trivial causes, that they nevertheless indicate a condition of the nervous system which is unable to withstand the pressing or exciting effects. I don't know as I can better explain this than by saying, that in every disease you must have two factors; first the normal resistance of the person; second the amount of stress brought to bear upon that resistance which the person has. For instance, one person may

stand a certain amount of exposure that it would be impossible for another to withstand. The person which withstands the largest amount of tension upon any part of the system is said to be the most rugged or healthy. The other factor is called "stress." That is, the force brought to bear to break down this part of the system. One person may stand stress upon one part of the system better than another; but that factor or stress taken in connection with the normal resistance of the person in question, constitute what causes disease. That is, I will say this much—that this definition, or this explanation of the cause of the disease refers particu-
244 larly to the nervous system. While we might theorize and make it possibly applicable to all diseases, still we can make it definitely, certainly applicable to the nervous system in the case of the majority of nervous diseases.

Q. Doctor, are all spasms in children between the ages of four and five, or are there a variety of causes that might produce with children between the ages of four and five, so that they have what is commonly known as fits?

A. Yes, sir; there are a variety of causes. I suppose that the causes given for epilepsy might pertain in the child as well as in a grown person. A child lacks development in that part of the nervous system commonly called the "inhibitory"—lacks development in the part of the brain which has control of the inhibition or movement; that is, stopping or restraining movement. And consequently a trivial cause sometimes operates to bring about action in that brain, action which would not be brought about if the child had its nervous system fully developed. That is the reason why children are so subject to spasms accompanying intestinal disorders, and the poison, call it auto-inoculation poison, which is very liable to accompany those intestinal troubles; spasms in children—one of the most common symptoms that we find. Genuine epilepsy generally occurs without accompanying constitutional symptoms of other diseases.

In the case of other spasms I would expect to find some constitutional condition which would account for that. For instance, evidences of kidney trouble, or evidences of intestinal trouble or something of that nature. The most frequent cause in children is intestinal trouble. The majority at least of the spasms of children due to intestinal disorder are attributed to the effect of the
245 poisons absorbed into the system from the intestinals upon the brain. I could not say that they were never due to worms. The common people call it worms.

Q. What do you say as to whether the overloading of the stomach would produce spasms in a child?

A. Simply overloading of the stomach once I would hardly believe would be sufficient to cause spasms in a child. Continued overloading of the stomach might. Irregular eating and drinking is the most potent cause probably of intestinal disorders of children. One of the most, at least. What I call irregular eating and drinking of children is commonly called piecing between meals; eating late in the evening and eating without restraint when they

do eat. The disease of epilepsy, in those cases, I have known and seen, the pulse is low. After the patient comes out from under the influence of the spasm the pulse gradually becomes more rapid. During the spasm it is a practical impossibility to take the temperature, as a rule. I should say that only in exceptional instances would the disease be accompanied by any fever. Those instances might be stidus epilepticus, long protracted; possibly the violence of the spasm.

Q. Doctor, we will suppose that a child between the ages of four and five years has a flushed face, temperature of about 104, and talks considerably while in that condition, goes off into a spasm, what do you say as to whether or not, from the condition of the child described, such a spasm would be considered a genuine epileptic spasm?

A. I have already stated that I have never seen a case of what I considered genuine epilepsy before the age of ten years. In the supposed case the presumption would be, as shown by my previous answers, that the spasm would not be epileptic. However, if
246 it were found that no other assignable cause more than those mentioned could be found, and if after a certain length of time the spasm was repeated without those symptoms of fever, flushed face, I should think the first spasm had been epileptic. I have seen the child in question here. I have made an examination with reference to its physical and mental endowment or capacity. I find its condition to be in those regards what we generally term a healthy child, so far as I am able to discover. I have examined the wound on the head of the child with reference to ascertaining as to whether or not there had been in the infliction of it any injury to the skull.

Q. Now, will you go on and state, if you please, what you find with reference to both scalp and skull?

A. I find a large scar, shaped like the letter "V" upon the right side of the head, one side of which I should judge was about two inches long; and the other side about three or two and a half. This scar seems to be a perfectly normal scar, free from tenderness, induration, adhesion, or any other evidence of diseases. I find no evidence of any injury to the bony structure.

Q. As to the mentality of the child, Doctor, what did you discover?

A. It was good so far as I could ascertain; a very bright little girl, I should say.

Q. Now, sir, we will suppose, Doctor, that on the 14th day of December, or 16th, either one, 1897, the wound you have examined or scar you have examined on this child's head was produced by the bite of a dog, or from any other cause that did not injure the skull, nor the inner table of the skull, what do you say as to whether or not there would be likely to follow from that injury, healed
247 and managed as you found it, any permanent mental injury to the child?

A. I would not.

Q. We will suppose, for instance, Doctor, that that wound readily

healed within seven or eight days so that the attending physician dismissed the case, what do you say as to whether or not that would indicate a normal, healthy condition of the child?

A. This question of course would be answered in the affirmative; the fact that the wound healed so readily, however, does not exclude all forms of bodily disorder; as there are few forms of bodily disorder that will retard the healing of a perfectly aseptic wound. I never knew of an epileptic spasm or convulsion being caused by fright.

Q. Doctor, we will suppose that on the 16th day of December, 1897, an assault was made by a large dog upon a child; a female child between four and five years of age, inflicting a wound with his teeth upon her scalp and face, and that the child was confined some three weeks in bed, showing during this time great nervous depression and mental disturbance; that after three weeks and until April 14, and during the three weeks she had complained of a great deal of pain in her head, and her head hurting her, and had at various times, particularly during the night-time, shown mental disturbances, complaining or making exclamations that there were dogs about, and similar statements; and supposing that along about the latter part of March the child had the measles which confined her to her bed for about three days; that she was kept in thereafter for a week or so; that on the 14th day of April she had no cold, that her bowels were as usual, that on that morning she had flushed face, more or less flushed, and that at about 11 o'clock that day she was put to sleep, after making complaints
248 that she did not feel well, and shortly after she aroused in a spasm, characterized by stiffening of the limbs, and arching of the back, throwing her head back and eyes staring, dilated pupils, frothing at the mouth; her teeth very firmly set, so much so as to make impressions on the metal of a fork, Exhibit B. That such spasm lasted anywhere from five to fifteen minutes; and that after coming out of such spasm the child was white and pale and livid, and remained in rather a lifeless condition for an hour or more. In connection with that, consider also that a sister of the mother had died of some lung affection; that there was nothing in the nature of epilepsy in the family of the mother nor the father. I ask you under that state of facts, what in your opinion would be most likely, in the symptoms, and in the causes named in this statement to induce the epileptiform convulsions of the 14th?

A. No conservative physician will allow himself to give a definite and fixed opinion with a set of circumstances related there as to the cause of that spasm, without further investigating it. He could simply say that no one could arrive at a reasonable conclusion. Now, there are some parts of that question that I have forgotten.

Q. I will read it over again so you will get all its parts.

(Question read.)

A. I suppose he meant by that, the 14th of April?

Mr. GORE: Yes.

A. The question is a question as to the cause. The supposition

is that in answering it the physician must choose between an injury received four or five months previous, and a sickness which existed two or three weeks previous. That is all the evidence we
249 have to go on. Now, in the first place, let us take up the injury. That injury we will say, if it is going to cause a spasm at all must cause it in one of two ways, principally one of two ways; either from the injury itself—the blow, contusion, tearing of the scalp, and the injury to the head; or it must produce it by the nervous shock which it gives the child. Now, the injury *per se*—that is, the injury itself, we will grant, might cause it in one of several ways; it might cause it by the condition of the wound or the scar; that is practically excluded by the physician in the treatment of this case, because, first, contrary to the testimony which has been introduced here, an injury to the nerves of the head at that particular point is not liable to induce spasm. Why? If you will test the feeling on the side of the head you will find it far less sensitive than in many other portions of your body, for instance, the hand and fingers. And I have heard no evidence to show that there is any condition of the scar, at least in this case, to cause any disease of the nerve. The next thing comes as to the injury inside the skull. That is practically excluded by the circumstances of the injury. The blow received was such as has never been assigned as a cause for a fracture of the internal table of the skull, it is a practical impossibility that it should cause that without depression of the outside of the skull. Fracture of the internal table of the skull in a child of that age is a practical impossibility—in that locality, is a practical impossibility, without fracture of the external. Hemorrhage has been spoken of. The hemorrhage from an injury of this sort would have been one of two varieties. It might have been external, that is, just inside of the bone, external to the brain. It might have been inside the brain itself. If it were inside the
250 brain itself, it would then shut off some of the nerve filaments which go to the outer part of the brain, and by so shutting them off, would have caused some paralysis, or other visible condition. In that locality probably some affection of the speech, or of the hand, but of the other hand on the left hand or leg.

TUESDAY A. M., *May* 31, 1898.

Mr. STEWART: If your honor please, we desire to call, in consequence of his engagements, first, this morning, Dr. McGugan.

The COURT: Very well.

Dr. ARTHUR McGUGAN, being sworn as a witness on behalf of defense, testified as follows:

Direct examination by Mr. STEWART:

I am in my thirtieth year; my profession is that of medicine and surgery. I live in Kalamazoo.

I am a graduate of the University of Michigan, medical department. I graduated in the year 1892. I entered general practice in Ann Arbor—in the city of Ann Arbor, first as assistant to Dr.

Herdmann, who is professor of nervous diseases in the university; and during the same year I was appointed as instructor on the teaching staff of that school. I assisted Dr. Herdmann in all, three years. My work as a teacher extended something over two years. I had charge of the instruction of the junior students, that is, the third-year students, in the methods of diagnosis of nervous diseases. I had charge of Dr. Herdmann's cases in the hospital, and did his work when he was away.

Q. What is included in that term, "nervous diseases"?

251 A. Well, there are a great many manifestations included under the general term "nervous diseases." To give a definite meaning of "nervous diseases," you mean, necessarily, a disease of the nerve tissue; that is, disease of the nerve cells or nerve fibers, that of course, it might include a great many things; it might include insanity; it might include different forms of paralysis; it might include epilepsy; it is a good deal as you wish to look at the matter. For instance, in epilepsy, epilepsy is defined usually as a nervous disease, whereas, it is not always a nervous disease. It is only occasionally a nervous disease; but it is always manifested by means of nervous symptoms. It is manifested through the nervous symptoms.

I am one of the physicians in the asylum for the insane in this city. I was appointed there three years ago this month. I am in the female department of the asylum. I am the senior assistant at the female department. I should say that I have given more attention to disorders of the nervous system than I have of any other particular branch. I have always been associated with them. Of course my work includes surgery and general practice as well as nervous diseases, as it is always identical. I have occasionally, perhaps frequently, met the city physicians in consultation in regard to disorders of the mind and disorders of the nervous system. I am acquainted with the construction of the nervous system in the body. Necessarily I understand something about it.

Q. Will you please advise us as to the arrangement and general functions of the nervous system? Please demonstrate to us by the use of any chart or model you may have for that purpose, pointing out its location and ramifications throughout the body, and please point out what arrangement, if any, nature has made for the

252 protection of this nervous system. Please show the location of the various branches of the nerves that lead to the scalp, and describe their functions and importance as compared to the other nerves.

A. Now, in order that you all may understand exactly what I am talking about, it is necessary to go down to the fundamentals. There can be considerable time spent on this, or there can be very little time. I presume the——

Q. Well, it is a pretty important matter.

A. The necessity is to make plain to the jury especially what we are talking about. I would say in the beginning that to understand what is meant by the "nervous system," it is necessary first to understand what is meant by a nerve cell, and a nerve fibre.

Now, this little point that I wish to make clear to you all, or may already be clear to a great many of you, perhaps—there are some that it is not clear to—in the first place, understand, that the nervous system is made up of minute particles or nervous tissue that are called nerve cells; and also very, very fine cobweb films that are called "nerve fibres." They are very, very small; I don't think I can give you any definite idea; it is enough to say they are microscopical in their dimensions. This shows a nerve cell (indicating on chart); it consists of a solid portion with an inner body which is called a nucleus, and passing off from the nerve cell are the nerve fibres; there is one long nerve fibre; there are several other short ones. Just bear in mind the nerve tissue is here, the nerve cells between those fibres. Of course there is other tissues there that is intended simply to support the nerve cells and bind them together, hold them in place; but the essential portions are the cells, fibres, and they are arranged in this manner (illustrating). The large centres of the nervous system, particularly the brain, you all know about it, is here represented, occupying about as much space as indicated there; I will show you a plaster cast indicating the shape. Then going down from the brain, passing into the cavity of the spinal column, the spinal cord. Now, the question arises, how much of this is composed of nerve cells and how much is composed of nerve fibres. I would say that the nerve cells, that the greater portion are gathered together in the brain mostly on the outside of the brain; some on the inside; and also in the spinal cord; in the inside of the spinal cord there are some lesser centers located in different portions of the chest and abdomen, and some other smaller accumulations elsewhere; but for the most part the cells are included in the brain and in the spinal cord. Now, you understand I am talking about nerve tissue which go to make up the brain and the interior of the spinal cord. And when I am speaking of "nerve fibres" I mean this long thread-like process which passes off from the brain and from the spinal cord to the arms and the legs and all portions of the skin.

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Now, the next thing for you to understand clearly as I can make it seem to you, the functions; what is the business of the nerve cells and what of the nerve fibres. I can make that plainer to you by comparing the nerve fibres to the telegraph or telephone wires and the nerve cells as the centres or exchange, the central offices. By means of those nerve cells and nerve fibres, our minds are kept in touch with the outside world, with everything that goes on about us by this means; we have two classes of nerve fibres; that class which takes up impressions; impressions of touch or smelling, or taste, or of sight or hearing, and carrying them into these nerve centres that I have spoken of. The second, or the other class of nerve fibres, are the fibres that take up our impulses from the cells inside the brain; that goes in the brain, and carry those impulses out to discharge them in a muscle causing movement. Now, the sum total of nerve action or mental action is included in the cycle of all events, picking up an impression and

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conveying it inward; the processes that go on between these nerve cells inside estimate what they are exactly, and the impulses that go out in those processes; then the business of the nerve fibres is to carry in impressions of sight or taste, or sound or touch, whatever it may be, and to carry out impulses or emotions, and the business of the nerve cells is to receive these impressions that come in, estimate their value from conclusions from them, and discharge the motary impulses which result, as you understand, in movements.

Now, we have nerves in this case under discussion; the nervous mechanism involved in the present cases is one of that class of nerve fibres which carry impressions inward greatest to extent, and perhaps a slight extent one of the branches that carry impressions outward; and that is a nerve which arises deep from beneath the brain.

Mr. GORE: Do I understand you that we have in this case involved nerves to a great extent, which carry impressions inward, and to a slight extent carry outward?

A. Yes. The nervous sensation in question is one which passes from beneath the brain here out upon the face at various localities, out upon the scalp in various localities; it supplies the injured area here. There is also a motory nerve which supplies muscles in that injured area—whether that has been uninjured in this present
255 case or not, is difficult to say. That is not a nerve like the optic nerve, the nerve of sight, nor the nerve of hearing, nor the nerve of taste, or touch; it is an ordinary nerve of sensation. It has no greater importance, I should say, than any other nerve of sensation.

Mr. GORE: What is the name of that?

A. It is the fifth facial nerve. We commonly believe, perhaps that the sensory films going into the scalp are less sensitive than those going to other regions, particularly to the hands, or the feet, or the lips, or the tongue, or some other sensitive portion of the body. It is difficult to estimate exactly about that. I know from personal experiment that it is not so sensitive so far as taking up impressions go. There are some tests that will make in regard to that—for instance a little instrument we use in testing relative sensibilities of certain cases consisting of some little compass, two little points spread apart, you place those two points on top of the tissue, and they can be distinguished one-eighth of an inch apart; that is, the person being tested will distinguish the difference between one and two points when they are only one-eighth of an inch, perhaps less than that, separated, and perhaps varies from that perhaps to two or three inches apart on the top of the area of the scalp line midway between those two extremes. Now, before I will put this chart down, I will remind you again of the appearance of the nerves passing here. Here is a spinal cord here; this is supposed to have had the spinal column cut down, so as to show the spinal cord, lying in there and then the branches of nerves, going off from each side to supply the skin and muscles. This shows the relation of the brain which
256 lies just above the eye here, and this is down about even with the ear, then down with the back of the skull, and then en-

closed by membranes. The brain really has three coats and they are placed about it for the sake of protection. The outer coat is a very dense, firm structure, which is called the dura mater on account of its firmness. Right below that is another; right beneath that, nearer the brain is another membrane which perhaps furnishes the lubrication; a person's head is knocked from side to side and that furnishes the lubrication——

Mr. GORE: What is the last called?

A. The pia mater. Now, beyond this, I think I *I* can use another model to explain it from. I have here a plaster cast of the human brain. I will illustrate it. Here is the base of the skull. You will notice that there is apparently an irregular form, an irregular shape. There are various sharp processes all through this in the brain, as it is in the real skull, which gives attachment to this membrane or outside membrane that holds the brain in place, which is just as though the brain were tied up, it was wrapped up in a bundle. Now, I say all this fibrous tissue, leathery substance and that is fastened to these various little processes all about here, so that it holds it firmly in place; I should say also that this outside covering to the brain sends promulgations down into the various tracks, fissures, as they are called in order to give it a more firm hold on the brain, so that the brain is, as it were, bound down to these processes and held firmly there. Now, in addition to that measure of nature for protection, we have a considerable quantity of fluid, so-called cerebral-spinal fluid interspersed about the brain in various places, and particularly in the base of the skull here; the idea being to provide a water bed upon which it can rest to some extent
257 from jars and such things, so as not to cause any severe injury upon any one part or portion of the brain. I will say that is also the arrangement of this membrane about the brain—this outer covering of the brain, force applied to it, and prevents it being constantly in one particular spot.

The cranial nerves, of which we have heard considerable talk, and of which I have spoken this morning, pass out through the base of the skull in various portions as you see them cut off. This represents the position of the eye, the ear, the attachment of the various muscles of the optic nerve going out. It has a great many other things which have no particular bearing on this case. Now, here is a wax or plaster model of the average size human brain, of which I spoke before. We see here again the appearance of the various nerves passing out in different directions from the base of the brain, and they pass out to the outside. The brain, as I said before, is made up principally of nerve cells. Of course there must be nerve fibres. There are also nerve fibres where there are nerve cells, as the nerve fibres pass off from the nerve cells. I don't know that the interior of the brain would be particularly interesting to you. This shows the appearance of it. You will notice that there are little indentations, fissures, as we call them, tracks, all over the surface of the brain, and you see here a deeper dip down into the brain. Those fissures, those tracks permit the dipping down in of the outer layer of the brain, and that outer layer is composed of nerve cells; and

any injury to the brain from the outside of course, this layer is the one that is most immediately involved. With reference to the special case we have under consideration, the corresponding seat
258 of injury is right in this locality, here on the right side. The cells on this side of the brain in that side of the injury, has control over the left side of the body; probably you all know that; perhaps you do not; the fibres which pass from these nerve cells cross over to a great extent so as, for instance, if my brain were injured severely, suddenly on this side, I would be paralyzed or have some trouble, not on the same side, but on the opposite side of the body. For instance, we have centres here along the area I show you that have control over the arm, or over the face, or over the foot, or the hands. We are able by this to diagnosis often exactly to the very spot where an injury resides in the brain by means of the member of the body affected. For instance, a man has paralysis of the arm or the leg, and everything indicates a tumor, we can tell what portion of the brain to uncover by means of removing the button of the brain from the skull to remove that tumor. Just bear in mind that centres on this side of the brain supply the other side of the body. Now, here is the upper portion of the human skull, which has preserved in it the side of the injury in question. This is the lightest skull I have ever seen. You will notice the thickness of that; it is very old and very dry specimen, and very light; it is probably from a young person—well, not necessarily; it is probably from a person of the female sex from its general formation. You will notice it is very smooth on the outside. You will notice it is very dense and very hard; it has been elastic; it consists of, as you have, an outer table and an inner table of an interior spongy substance in which is contained the marrow, what slight amount there is in the skull, and the blood-vessels. Will I pass this to the jury?

259 Q. Yes; there is just one question before it goes, in this connection. Doctor, what is this, that piece, spongy matter between the outer and inner surface of the skull?

A. I said that was the portion which contained all the marrow there would be present; there is very little; and it contains but little.

Q. And that is the forehead part of the skull?

A. Yes, this is the front portion of the skull; this is the area; you cannot tell exactly on this, because it is a larger skull than that under question; probably about in that location (indicating). Now, I don't know that there is anything further. If you want to see how the nerves branch out on the face or the body—they make their appearance from holes in the skull, come out underneath the skin, and then branch out in innumerable ramifications and supply the portions of the skin overlying their location.

Mr. GORE: I would suggest that the chart, and the brain and the skull be marked as exhibits in the case.

Mr. STEWART: It is all private property, and they may be so considered, if you want to designate them. They are to be returned when through with; that is all.

Mr. GORE: We think we are entitled to something of the kind in the record that you should have them here.

The COURT: Yes, they should be left here, retained here during the trial of the case.

Mr. STEWART: Certainly.

The COURT: They should not be taken away, and they may be considered as exhibits one, two and three. It is not necessary that they should be marked. They can be easily identified, I imagine.

Mr. GORE: The chart is one; the brain two, and the skull cap, three.

260 The WITNESS: The skull is cut up in several parts. The vault of the skull is made up of several plates dovetailed together as you see there; you can see that the skull has been joined; those are the joints.

Q. Doctor, please look at the child, the plaintiff in this case at this time, and tell us what you can of its physical and mental condition. Please, first, examine the eye, next the scalp and skull, its reflexes; then anything else you may find in relation to it.

A. The eye seems in a normal condition with the exception of a very slight redness on the lower lid, which is not nearly so marked as it was the first time I saw the child.

Mr. BACON: Last Tuesday?

A. I have forgotten the date. You said examine next the scalp?

Q. Yes, sir; the scalp and the skull?

A. Do you wish me to examine the reflexes?

Q. Yes?

(The witness then made an examination of the reflexes of the child.)

Q. Now, Doctor, tell us what your opinion is as to the present physical condition as shown by your examination?

A. Well, so far as I can see, the child comes to me like an ordinarily healthy child. I don't determine anything abnormal in the child's present condition, excepting of course the remains of the injury, the scar in the scalp.

Q. What is your opinion as to the child's present mental condition, as shown by your examination, and what you have seen of the child since this trial begun?

A. I consider the child's nervous and mental condition perfectly natural and normal.

Q. What do you say as to whether or not there is any-
261 thing in the wound producing the scar on the head, or in the scar itself, that would be likely to produce bad symptoms or results in future?

A. I can see nothing in the present condition of the scar that would indicate that it had caused bad symptoms, or would.

Q. Why not, Doctor?

A. Well, in the first place, from my personal experience with scalp injuries, I don't find any serious results follow. In my own

present practice, I frequently am called to repair lacerated scalps, either from falls or assaults by other patients; also outside; I have not seen any serious injury; I know of no injury following such—no bad result following such injury. I have in my mind at the present a case in which a woman lacerated her scalp herself, and to such an extent as to lay bare as much of the scalp as is shown in the specimen there. There has been no serious results following. The present condition of this scalp, of the scar of this scalp, I find to be very good. The scalp is loose upon the skull as it should be; the skull feels smooth underneath and I should judge from the appearance of the injury that it made a very good result in healing; because I find on close examination that the hair is growing almost into the center of the wound; not quite, but small young hairs you might see, are coming.

Q. What do you say as to whether or not there is any indication in that scar, that wound, of nerve pinching or lasceration?

A. I could not say that there was. It does not seem to cause pain or manipulation; it does not seem to be irritable. I have not seen her scratch it. I see no indications of its being in any unnatural state.

Q. Doctor, we will suppose there was indications there of nerve pinching sufficient to produce a spasm or fit; if that were the case, do you think it could be distinguished by the examination
262 and inspection that you have given it?

A. I cannot answer you positively about that. It might, or it might not be the—the possibilities are that you would be able to find something leading you to suspect such. I do not find anything of that character there.

Q. Doctor, how many patients are there in the asylum, and what will it average per year that are under your supervision and inspection?

A. The number is of course constantly increasing. There is there now twelve hundred and seventy-six, seventy-five or seventy-six patients.

Q. Doctor, you have been here considerably during the progress of this trial. Do you remember of anything with reference to a spasm of this child, had on the 14th of April, 1898?

A. Yes, sir; a good deal of evidence given, and I have heard the description given by its mother to me personally.

Q. Now, Doctor, considering the injury in all its scope, what have you to say of the alleged causes of the spasm or convulsion of the 14th of April, 1898, and 16th of April, of the same year?

A. What have I to say of the alleged causes?

Q. Yes, considering the injury in in all its scope——

(Question read by the reporter.)

Mr. KNAPPEN: It seems to me that the question is improper.

The COURT: I think so. He is asked to give an opinion about something that he has in his own mind, that is not stated in the question; and the jury cannot understand any of the facts upon which he bases that opinion; they have no right to know at any rate.

Q. Doctor, considering the injury in all its scope, with reference to the manifestations of the child on the 13th and 14th days
263 of April, just preceding the alleged spasm, as you understand them from the testimony produced in this case; tell us, if you please, what in your opinion there was in this injury to produce any such results.

Mr. GORE: Same objection to that.

The COURT: I think that is equally objectionable. It does not state the facts upon which he is to base his opinion. Those should always be stated in a hypothetical question; the facts should be stated clearly in order that the jury may know just what he bases his opinion on.

Q. Well, we will get at this——

Mr. STEWART: Exceptions follow all rulings here.

The COURT: Yes, sir.

Q. Doctor, considering your examination of the scar, please state your opinion of the same, and whether or not you have been able to find anything in the scar that might interfere in any way with the future health of the child?

A. There is nothing.

Q. What do you say, considering your examination of the head, scalp and skull of the child, as to whether or not there has been any injury to the skull of the child from this wound?

A. Well, in the first place there is no evidence whatever of injury to the child's skull, either in its present condition or on account of symptoms that follow; because I know that injuries of the skull result in different symptoms than those I have heard described; and furthermore, injuries to the—an injury to the skull could not, in my opinion, have occurred from the causes described. That is all.

Mr. KNAPPEN: Now, I move to strike out the larger portion of the answer, because it is based on something he has heard
264 described here in this case. The question asked him was on the personal examination he made of the scar.

The COURT: I think that should all be stricken out, except the first part of it.

Q. We will put the question this way: Doctor, considering your examination of the skull and the wound, and what you have heard testified to here with reference to the same, what is your opinion as to whether or not there has been any injury inflicted upon the skull or the brain of this child?

Mr. KNAPPEN: Same objection.

The COURT: That is objectionable. He has already answered that he finds no injury from his examination. I think that answers the first of the question which would be proper standing by itself. The rest of the question, as to what he bases his opinion on from the testimony, would be incompetent. The question should be excluded.

Q. Doctor, what kind of force would be necessary in order to injure the scalp so that the brain would become affected by it?

A. Why, I doubt if the scalp would be injured so as to produce an injury to the brain.

Q. Doctor, what do you say as to whether or not there has been internal bleeding in the brain, and if not, why not?

A. I don't think there has been internal bleeding in the brain, because there is nothing in the child's present condition to indicate such, because if there were bleeding as the result of that injury, we would have localized symptoms; that is, symptoms confined to one side or part of one side of the child; such symptoms coming on immediately after the injury, and probably existing until
265 this time and much longer. Whereas, on the other hand, I find no evidence of paralysis in the child, or any other symptoms that would indicate that there has been internal hemorrhage or internal bleeding.

Q. Suppose from time to time from the period of the alleged injury on the 14th of December last to the present time was restless nights and for two or three weeks after the accident would talk about the dog and urge its mother to put it out, what do you say as to whether or not those manifestations would be an indication of permanent injury to the child's mind or nervous system and premonitory symptoms of epilepsy?

A. Why, I don't think they are evidences of impairment—evidences of injury to the child's mind. That is what you ask?

Q. Yes.

A. I think that they are rather evidences of a normal condition of the child's mind; because a normal child is frightened, and evidences fright from such a cause.

Q. Doctor, suppose that on the 14th of April after the accident this child complained of headache and of being tired, and wanted to lay down; that its face was flushed and temperature high; and that within an hour or thereabouts after these complaints the child began to cramp, froth at the mouth, shut its teeth together, and at the beginning of these manifestations cried out, "Mama, put the dog out," and make like expressions; that it lay in that spasm for from five to fifteen minutes; and that after it came out of the same it lay for an hour or two conscious and without going to sleep. What do you say as to whether or not that was a genuine epileptic spasm or an epileptic spasm at all?

A. It was not an epileptic spasm at all.

266 Q. State, if you please, what would produce such a spasm as described?

A. Why, it is the ordinary spasm observed in infancy and early childhood, resulting in most cases from errors in diet; that is, overfeeding, eating substances in such quantities and of such character that are not perfectly digestible. They also occur from as at the same time or following various so-called infectious diseases; that is, such diseases as scarlet fever, measles, diphtheria. They also occur in children with tuberculosis or of consumptive heredity. They also occur in children suffering from rickets. In fact, they come in

conjunction with any disordered condition of the child's physical state, particularly if the child is predisposed to convulsive disorders or to nerve disorders.

Q. Suppose the wound to have regularly healed and no injury having been imposed upon the brain by the wound; what do you say as to whether or not there would be likely to be any connection between the injury of the 14th or 16th of December, 1897, and the spasm of the 14th of April, 1898?

A. No connection whatever.

Q. Suppose that three weeks prior to the alleged spasm of the 14th of April the child was taken down and confined to its bed with measles and had an ordinary run of that sickness; to which of the two causes, the scalp wound of the 14th of December before, or the measles would the spasm be most likely to be caused by?

A. I should not say it was caused by either of these causes alone; if I may so answer. In weighing the relative effect of either cause I should place more importance upon the more recent of the two causes.

By gastro-intestinal symptoms, we mean symptoms arising from the stomach or the intestines. And speaking of them as we do at present, we mean for the greater part, disorders of indigestion
267 either in the stomach or the intestines, the presence of fermentation in the stomach or the intestines, and probably also of imperfect elimination; that is, incomplete throwing off of poisonous form by fermentation; that is incomplete throwing off from the bowels, kidneys and skin, one or all of them.

Q. Doctor, suppose the child was allowed to eat everything between meals that it chose; what do you say as to whether or not the habit of irregular eating would be likely to cause or produce spasms such as have been described, the child had in this case?

Mr. GORE: I object to that the same as before.

The COURT: The last part of the question, it does not seem that the witness knows anything about it; the spasms that the child had. There is nothing stated in regard to that.

Mr. GORE: That is the only part I object to with reference to that.

Mr. STEWART: I did not catch your honor's remark.

The COURT: This witness does not testify that he knows anything about the spasm. There is nothing in the question that will tell him anything about it.

Mr. STEWART: Is not the testimony in this case with reference to that in, and hasn't the doctor heard that testimony?

The COURT: The question can never be put to a medical expert based upon any portion of the testimony. The rule is clearly laid down by the supreme court in that regard.

Mr. STEWART: Haven't we a right to ask a hypothetical question independent of that?

268 The COURT: You have a right to your question, but the latter part is what is objected to, "the spasm as described in this case," and so forth.

Mr. STEWART: We will leave that part of the question out.

Q. Suppose the child was allowed to eat irregularly between meals when it chose, what do you say as to whether or not that habit of irregular eating would be likely to cause or produce spasms?

A. Why, it is usually found to be one of the most immediate factors in producing such a spasm—in producing spasms in a child, and the most common of all causes.

Q. Doctor, from what you have seen and learned in relation to this child's condition now, and considering the alleged injury, what do you say as to whether or not the child will be likely to suffer in the future from that or not?

A. Why, I see nothing in the child's present condition, either nervous—either physical or mental, upon which I could base a bad prognosis. In order to be more explicit in my prophecy about the child's future, I should have to know something of the history of the child, and I should have to specify the precautions in regard to the future management of the child.

Q. What of the eye, Doctor, and the ear, and the nervous system? Go on and state to each one of those three subjects.

A. I see nothing in the eye of an abnormal or diseased character, whatever, as I stated before. I see nothing in the child's make-up of an abnormal condition.

Q. Doctor, give us the relative weight of the various causes that might be considered as producing spasms.

A. Well, in answering you as to that, I should have to consider several things. I should consider text-book authorities to
269 some extent; I should consider my personal experience, that is, my daily life among people who are subject to those spasms, and I should have to consider, of course, the more recent developments which are described in the journals from day to day; and I should say that, basing my opinion upon those sources of information, the causation of spasms divide themselves naturally into two classes. The first class, and the most important, we call predisposing causes. And by those we mean hereditary influences in the child's ancestors, or in the ancestors of the person afflicted with the spasms. By hereditary influences, that is what I mean, we mean the presence in the ancestors of the case in question, of disease such as insanity, tuberculosis, that is, consumption, epilepsy, hysteria, St. Vitus dance, or any grave disease of such a character. We frequently find cases of spasms and other nervous diseases in which there is no assignable cause excepting the predisposing cause of hereditary influence. I do not mean by "hereditary influence" that epilepsy is caused by epilepsy in its parents, or that a spasm in a child is caused by a spasm in its parents; or that tuberculosis in one is caused by tuberculosis in the other; but I mean that any of these debilitated conditions will express themselves in the descendants of the family in some one or other of these conditions. It sometimes skips a generation. Then as to the second class of causes, exciting causes——

Mr. GORE (interrupting): The second class—what is called exciting causes, Doctor?

A. Yes, sir; the only—the principal exciting causes of spasms are, first of all, the presence in the blood of the individual, some toxine or poison. It may be generated from imperfect digestion, or may come from acute disease of any kind. Spasms can be
270 caused by direct injury to the brain. This, however, is a particular form of spasm, perhaps unessential; as it does not come into the consideration of this case. Reflex causes have been assigned as exciting spasms particularly eye strain.

The intestinal symptoms spoken of are also reflexes, inasmuch as the poisons irritate the peripheral, that is, outside ends of the nerves, as well as the nerve centers.

Emotional causes are ascribed to epileptic spasms. They are not ascribed to spasms in children. I think that about covers the range. There are other minor ones.

Q. Doctor, we will suppose that this child, on the 14th of December, 1897, received a scalp wound as indicated by the scar you have examined on the child's head; that on the 24th day of March, following that date the child was taken to its bed and had an ordinary run of measles thereafter; and that the child was allowed to eat between meals and irregularly and overload the stomach; and on the 14th day of April it had a spasm, whereby its muscles were contracted and its limbs bowed and twisted, and it frothed at the mouth. To which one of the three causes named would you ascribe the spasm?

A. Well, what were the three causes named, again?

Q. The injury, the measles, the overloading of the stomach.

A. To the overloading of the stomach and the irregular eating, I should ascribe the cause of the spasm.

Q. What do you say as to whether or not under that condition the injury of the 14th of December, 1897, could have had anything whatever to do with the spasm?

A. In my opinion it could have nothing to do with the spasm.

Q. Will you state if you please, what in your opinion would have to do with the spasm?

271 A. I can state fu-ther if I may be allowed—if I may be allowed to know that the child has had measles, that the presence in the blood of the poison, the toxine which results from measles, combining with the toxines that are present from indigestion would produce spasm, are the most frequent causes of it.

Q. Doctor, in one of the former questions I used the word "scalp" instead of "skull." I will repeat the question with the word "skull" in it as it should be. What kind of force would be necessary in order to injure the skull so that the brain would be affected by it?

Mr. GORE: What kind of force?

Mr. STEWART: Yes; or what degree?

A. We could have at least two kinds of force injuring the skull so as to fracture the skull, so as to injure the brain. The first form is that form—in the first place, there must be direct blows; a blow from a sharp instrument, or from a dull instrument, of sufficient force, can break both the inner and the outer tables of the skull, and the grafments pointing inwardly can induce the pressure upon

the brain. The other form of force observed in a skull injury is that of a rebounding—not from a heavy object—a heavy blunt object, which sometimes causes a fracture of the inner table and the inner half of the skull without any apparent injury to the outer skull, which usually happens in the skulls of adults.

(Last question read by the reporter.)

Q. Doctor, you have said something about hereditary influences. Will you please state what you meant by "hereditary influences"?

A. Well, as intimated before in answering the question, by "hereditary influence" as applied to disease, we mean the transmission of unstable, faulty constitutions from one's ancestors, or from ancestors to their descendants, if they be of the various

272 forms described or spoken of, does not necessarily mean that a person to be insane, must have insane parents; nor that a person to be consumptive, must have consumptive parents: or that a person to be epileptic must have had epileptic parents; but it means that a person marked with any one of these three conditions or a great many others that might be enumerated, may have been bequeathed with such a predisposed constitution from his ancestors; not necessarily his parents. That such disease itself need not reside in the parents.

Q. Why do you attach so much importance to hereditary influences?

A. Well, I probably attach so much importance to hereditary influences as I do like all other asylum physicians, or those who live in daily contact with that class; we are brought in daily contact with them; we are brought in daily contact with their friends; we have opportunities for going into—for inquiring into the state of the family health, and we make use of these inquiries; it forms an important, a very important section of the examination of such a patient, and we find that to observe a case of epilepsy or insanity in which there is told history of heredity, we find it very unusual, so much so that we are inclined usually to feel that the friends are holding something back from us in their answers. I would also add that the feeling of the importance that heredity plays in the transmission of life is growing. It is taking legal form; it has taken legal form, so much so that in the State of Ohio, that at the meeting of the last legislature there, the marriage laws, certain marriage laws passed with reference to persons in whose family there were such complaints as we have specified; the exact means of this is, of course, as anybody understands, to prevent the increase of such disorders.

273 Q. Why do you attach so much importance to indigestion and the measles as producing the spasms had by this child?

A. Why, I don't know that I attach so very much importance to the measles by itself. I attach more importance to the disordered condition of one's digestive apparatus; I do so, because of my daily experience with people suffering from spasms. I find that they are very much improved by attentions to such disorders, and also from my acquaintance with the subject discussed in the medical journals,

relating to nervous diseases by those who are making constant chemical and bacteriological experiments along this line, going to show that these convulsion disorders depend usually upon some irritant, usually of the kind described; that is, from toxine remaining in a person's blood.

Q. Doctor, what do you say as to the average number of spasmodic patients that you come in contact with at the asylum yearly?

A. Oh, the number varies. I could not tell you how many we have at present. We have, maybe fifty, probably seventy-five.

Q. What do you say as to whether or not you consider fright a cause for the production of such spasms as we have here?

A. Why, I don't believe that any one claims that fright is a cause of infantile spasms, or spasms of children. Fright is assigned as a cause of epilepsy; that is, as an exciting cause, in general so; there are probably two or three writers who attach importance to it. I know that fright can throw a patient into a fit if the disease has been established. In all my experience I know of no case in which the initial fit was caused by fright.

Q. Doctor, are you acquainted with Osler on the Practice of Medicine, which was quoted by one of our physicians on the
274 other side, and if so, what does he say about fright being one of the principal causes of spasms—epilepsy?

A. Yes; I have read the work in question. He does not assign fright as a cause of infantile convulsions. He stated that in epilepsy I have spoken of, as an important or as a principal cause; but he says it is a much less factor than is usually believed. That, of course, applies to epilepsy. It does not apply to the disease in question.

Q. What is your authority for your opinions?

A. Well, in the first place I took the usual medical course at the University of Michigan; I spent three years as an assistant to the professor of nervous diseases in that institution, and was brought in daily contact with the disorders that we have in question. I absorbed some ideas from my preceptor and from my experience there. I have read to some extent; read about all the important works on the subject. I read the journals devoted to such subjects so far as my time will permit; and in addition, I live with the people who manifest these disorders, which I think is perhaps of more value to me as getting a basis for opinions than what I read in books.

Q. Now, Doctor, we will come to the hypothetical question as put by the counsel to the respective medical witnesses that have been on the stand.

(Hypothetical question read to witness.)

A. I don't know that there is anything in that hypotheses for any conscientious medical man to say that any one or other cause produced those—or produced that spasm. There is an injury spoken of in December; there is an attack of measles spoken of; I think two or three weeks—the latter part of March. From what limited grounds we have in that question for making a decision,

and knowing that the form of convulsions as described come
275 from measles, and not knowing positively that that form of convulsion described comes from such a fright or such an injury, I should be inclined to place the greater importance on the most—or the more recent cause of the two. I do not think that any man could affirm, on his oath, that it was or was not, beyond a doubt, caused by either one. In my opinion, I should assign it to the latter cause. Not necessarily measles. There are other evidences that there might be other conditions present not stated in the fact as indicated, which would of course bias a person—I would not say "bias" a person, but it would influence him in making a diagnosis on such a hypothetical question.

Q. Now, Doctor, we will suppose this same question, put with these additions in the language of the counsel on the other side, "the epileptic cry before, preceding the spasm, and unconsciousness, sleep following"—is that correctly stated?

Mr. GORE: Characterized by the epileptic cry and unconsciousness.

Mr. BACON: He didn't say when the unconsciousness was.

A. There is nothing in those additions that add important weight. We can have unconsciousness in all kinds of convulsions. We usually do have unconsciousness in all kinds; we usually have a cry of some kind; not always.

Q. Doctor, counsel has said something about an epileptic cry. What is an epileptic cry?

A. An epileptic cry is a short, or protracted but a few seconds, perhaps, utterance between a yell and a groan. It does not consist of any articulated work. It occurs just as quick as a flash before the patient falls unconscious. It is caused probably by the
276 spasmodic closure of the vocal cords and the contraction of the air by the convulsion, in some people's minds, and in others—a disagreement—simply partakes of any ordinary motor act as a convulsion of the arm.

Q. Now, Doctor, we will suppose in this case, immediately preceding the spasm, as the child went off into the spasm, the child cried, "Mama, put that dog out of the room, the room is full of dogs—put the dogs out," or expressions of a like character. What do you say as to whether or not there would be anything in those expressions to indicate an epileptic spasm coming on?

A. Well, I can only reaffirm that the sound preceding an epileptic fit has never, in my experience, taken the form of words.

Q. Now, Doctor, we will suppose this child to have had a sister of her mother die in the asylum insane; a cousin, a blood relative of the mother, is now at the asylum, insane; that she had three brothers and two sisters die with consumption; and that this child was bitten in the scalp by a dog on December 14th, 1897; dreamed about the dog at night for some time afterwards, but suffered no physical discomfort beyond what would be caused by such a wound; shows no more evidence of a permanent injury than is shown by his child; has an attack of measles and is taken to her bed with

them the 24th of March next prior to said 14th day of April, and has had such a spasm as has been described on said 14th day of April, is found by the attending physician to show all the signs of great disturbance of the stomach and intestines, such as is known to follow injudicious eating and drinking: that the child is known to have been allowed to eat anything, and at any time of day, just as it may wish. What do you say as to whether the injury,
277 the cause of the injury, whether it was due to the fright, or had or could have had anything to do with the spasm?

A. The fright could not have had anything to do with it. I don't see as it could have had anything to do with it under such conditions.

Q. Doctor, we will suppose that this child had been allowed to eat between meals for a year or two prior to the injury, and was treated for worms prior to the 14th of December, and that on the 14th day of December it received the wound as shown on the scalp by the scar; that the doctor in attendance found no abrasion or injury, whatever, of the skull, neither to the outer or the inner table; that he cleanses the wound with antiseptics and proper solutions, sewed the wound so that it regularly and naturally healed, so that the doctor dismissed the case at the expiration of seven days, and the child showed no other manifestations of injury, and was up and about after that time; that on the 24th day of March, 1898, it was taken to its bed with measles, and had a usual run, not of the severest character of measles; that it was allowed after that to eat between meals; and on the 14th day of April it complained of headache and being tired; had a temperature high, say to the extent of 104 degrees; and within an hour after these complaints it went into a spasm with or without expressions, if you please, or cry, and remained in that spasm from five to fifteen minutes, and within a few moments after the spasm had passed, by examination of the mouth and tongue, the tongue was found to be heavily coated, the breath foul, the temperature high. What do you say as to whether or not there was anything in the wound inflicted on the 14th day of December, 1897, prior thereto that would be likely to produce that spasm and that result?

A. Why, I should not feel that one would be justified in
278 considering the injury in such a condition whatever. I should treat the case, if it were mine, as depending upon gastro-intestinal irritation.

Q. Now, Doctor, we will suppose that this child has an aunt on its mother's side, or had an aunt on its mother's side who died in the asylum, insane; that one of its blood cousins, a cousin to its mother, is now in the asylum, insane; that three of the mother's brothers and two of her sisters died with consumption. What do you say as to whether or not there is likely to be, then, an hereditary taint of disease that might result in epilepsy in the child?

A. I should consider the hereditary tendency exceptionally strong in such a case. I don't know that I have any case in mind presenting so many items of weight as such described.

Cross-examination of Dr. ARTHUR McGUGAN by Mr. GORE:

Q. I understand you just now to say that you considered these tendencies as strong as you had ever known, and that you had not in all your vast experience met with them. Is that what you said?

A. What was it?

(Question read.)

A. I made that remark.

Q. Well, you mean by that that you said so.

A. I uttered the sentence all right.

Q. Did you mean it?

A. Certainly I did.

Q. Now, I ask you, if that being so, why are you so reluctant to say that there is anything in this seizure of an epileptic character?

A. Because, as the seizure has been described to me it is not an epileptic seizure; it is a typical eclamptic seizure, or a seizure of
279 early childhood. An epileptic seizure is a condition in which there is usually partial or complete loss of consciousness, is or is not attended by convulsive movements; marked, in most cases, by a sharp, sudden cry occurring before the patient falls, if he does fall; the unconsciousness persisting for any time from a few minutes to several hours; the pupils sometimes dilated, sometimes contracted; usually dilated, towards the latter part of the stage; if the epileptic seizure is marked by convulsive movements, they usually last from one to three minutes; they are either general, that is, involving the entire body, or they may be confined to one group of muscles or one extremity, depending upon the character of epilepsy. If the attack is characterized by convulsive movements, the period of unconsciousness is usually much longer. It is not always, and only in advanced cases a disease of the nervous system; it is a disease that is expressed through the nervous system; and probably the only instance in which it is primarily a disease of the nervous system is where there has been direct injury to the nerve tissue, that is as well as fibres; I should say the nerve cells themselves.

Q. Is that your definition?

A. Well, I don't know, I am still thinking. Your question was a "definition of epilepsy."

Q. Precisely.

A. Or epileptic seizure.

Q. Yes.

A. Well, I will let it go at that.

Q. You have understood that in the seizure in question of the 14th there was unconsciousness of the child lasting anywhere from five to fifteen minutes. You have heard that from the testimony here.

A. No, I didn't understand that the child was unconscious that long, or unconscious at all. I have heard the testimony of the witnesses here.

280 Q. Haven't you heard them swear that the child was unconscious from five to fifteen minutes, one of them placing it at ten minutes?

A. No; I have no such recollection.

Q. All right. We will assume that it is in testimony that the child was unconscious for ten minutes at the time of this spasm. That would be one of the elements of your definition of an epileptic seizure, wouldn't it?

A. Yes.

Q. That is one. If it is in evidence here that the child had convulsions at the time of this spasm, that would be another element of your definition?

A. Yes.

Q. If the pupils of the eyes were dilated at this time, that would be another element of your definition, wouldn't it?

A. Yes, sir.

Q. And if these convulsions lasted from one to three minutes or longer——

A. If they did?

Q. Yes.

A. Yes.

Q. If they did according to the testimony. Now then, if these existed with what you call the epileptic cry at the time, that would be another element, wouldn't it, of your definition?

A. Yes.

Q. Characterized by this cry?

A. Yes, as I described it.

Q. In addition—as you described it, between a yell and a groan?

A. Yes.

Q. Now, in addition to these that you named, Doctor, the jaws were tightly pressed together at first, and there was frothing at the mouth, that would be still further indication of an epileptic seizure, wouldn't it?

A. Not necessarily.

Q. It would not necessarily be. It is usual or unusual that these things occur in an epileptic seizure?

A. The frothing at the mouth is described as occurring
281 frequently in epileptic seizure. I see them every day, and it is only occasionally I see frothing at the mouth.

Q. The books are wrong about that, are they?

A. Well, I should have to know just to what extent they mean——

Q. (Interrupting.) When they say they are generally accompanied by frothing at the mouth, they are wrong, according to your experience?

A. I should not say that they were wrong.

Q. Then do you agree with them?

A. I neither agree nor disagree.

Q. You neither agree nor disagree; you just have something on your own hook on the subject?

A. Not necessarily.

Q. Give us your rule, as you have discovered in that behalf?

A. According to my experience, I have met it only occasionally.

Q. If any element which enters into an epileptic seizure as you

have defined it today, was not present in the seizure the child had on the 14th, specify what element is lacking?

A. The first element is, that the child, as I understand it, did not go into the convulsion with the characteristic cry. In the second place——

Q. (Interrupting.) We have assumed that it did, as to that?

A. Well, I am not assuming.

Q. I know, but we have a right to assume, and you assume—we will say the testimony is that it did go into a cry?

A. Another element that is lacking——

Q. In your definition, Doctor?

A. Well, another element in the case, you say?

Q. No, I say in your definition—we are testing this seizure of the 14th in accordance with the elements of your definition?

A. You cannot do it.

Q. I am going to do that.

A. It cannot be done.

282 Q. Will you assume then that there is any element in the spasm of the 14th, but what is apparent in your definition, and which meets the requirements of your definition?

A. No.

Q. Now, I want an answer to that question.

A. As I understand the spasm?

Q. You mean by that, all the elements of your definition of an epileptic seizure were present in the seizure of the 14th?

A. No, I don't admit that they were.

Q. Now, specify which ones were not.

A. Well, I started to: First, I said the cry as I described it, was not there; the convulsion as I described it, was not there; the unconsciousness as I have it in mind, was not present in the child's case.

Q. So that, Doctor, your testimony given here to the jury, was on the assumption that there was no cry, and that there were no convulsions, as you have described them, and there was no unconsciousness. Is that true? Answer by yes or no.

A. What was the question?

(Question read by the reporter.)

A. No, sir; my testimony was not on that assumption.

Q. Then why did you say that the cry was lacking; that the unconsciousness was lacking, and that the convulsions were lacking, in answer to my last question?

A. I said that they were lacking as I described them.

Q. That is just what I said, as you described them. I am taking your definition right along.

A. As I described them. Yes, sir.

Q. You are here for the love of truth?

A. I was here to tell what I know about this case.

283 Q. To tell what you know about it for a consideration.

A. No, sir; there was no consideration.

Q. Do you mean that you came here without compensation and spent a week here?

A. If Mr. Chapin decides that he does not wish to pay me, I shan't ask him for anything.

Q. In other words, you would not sue him for your fees?

A. No; I would not.

Q. Now, Doctor, coming back to your experience. Where were you born?

A. I was born at Port Nugglesone, Elgin county, Ontario, thirty years ago in October. I lack four months of being thirty years of age. I came to this country at the age of seventeen, without my parents, and have been naturalized. I had charge of the cases of Dr. Herdmann in the University hospital, at Ann Arbor. Dr. Herdmann's cases are diseases of the mind and nervous system, as they are popularly declared. I attended a great many children for him; I couldn't tell how many. This was after I graduated; I was there after I graduated three years. Then I came here. My principal duties at the asylum, of course, are visiting all the patients under my care. The number varies. I have a certain number of wards that I am expected to visit personally, and I have a certain number of wards over which I am nominally in charge, which I need not visit, to see that they are visited by other assistants—about four hundred and fifty patients, which are those that are on my ward—wards of which I am nominally in charge. In addition, there is routine work of an executive and clinical character to do correspondence to attend to. We keep a record of each case; I couldn't say how much time it took; a good deal, in the relative term. There are about two hundred cases that I have to see twice a day.

284 Q. Two hundred cases twice a day would be four hundred cases in each day. When do your hours begin?

A. My hours begin at seven o'clock in the morning.

Q. And terminate when?

A. Seven o'clock next morning.

Q. They begin January 1st and end January 1st?

A. Exactly; we are on duty all time.

Q. You never sleep out there?

A. I sleep; yes, sir; but we are subject to call at any time of night. I have two hundred cases and make a call twice a day. That is regular, well-defined work.

Q. Can you tell us how much time—of your time—is required to make those four hundred calls?

A. Yes; I told you that it occasionally required an hour for one case.

Q. How much time for the least?

A. For the least it requires no time at all. Those who require attention are either—my attention is called to them by the attendant in charge, or something I may notice myself and wish to inquire about. Those that don't require my attention, I don't spend time with them.

Q. Now, do you make these four hundred calls a day or not?

A. With some exceptions, I see these cases every day. And they take from an hour to a few seconds each.

We have a brass band out there. I was a member of it, I think, the first year. I have a training class out there; I give lectures on the nervous system and some other topics to them. This does not take a great deal of time to prepare them now; it did at first.

I have had the care of epileptic patients where the epilepsy was induced by injury. I don't remember that I have ever treated a child under five years of age for epilepsy induced by injury
285 to the head. I have had the opportunity of studying such cases at the university hospital. I could not say how many.

Q. Can you say there was more than a dozen?

A. I cannot answer it.

Q. Well, there must have been more than one. How about that, was there more than one?

A. I think probably there was. I tell you, I cannot tell you approximately how many there was.

Q. Well, you remember distinctly one, do you?

A. Yes.

Q. Doctor, is it not true that the earlier the first attacks make their appearance, the less chance there is of complete disappearance?

A. I am of the impression that the later in life the seizures make their appearance, the more apt is to be permanent.

Q. I call your attention to Hirt's Work on Nervous Diseases. A work that you are familiar with; with an introductory note by William Osler, whom you have just mentioned as an authority. That is a standard work on the subject, is it not?

A. Yes, sir; it is regarded——

Q. (Interrupting.) It is regarded as authority?

A. I don't regard it as authority.

Q. Do you agree or disagree with the com-entator on this subject?

A. I cannot answer unqualifiedly yes or no.

Q. Will you please read from page 540 of the marked lines what he says on the subject; the lines that are underscored, on this page; read to the jury.

A. (Reading:) "The earlier the first attacks make their appearance the less chance is there of their complete disappearance. If the disease has set in, in early childhood, the influence of the
286 disease is generally very marked. The attacks become more frequent, and in women the increase in number is marked."

Q. There is some one who says that the earlier the attacks commence the more persistent they are; doesn't he?

A. Oh, you can find anything you want in the text books.

Q. Just answer.

A. He seems to. I have read it.

Q. What do you say, judging from the source from which you gained scientific knowledge that if the disease sets in, in early childhood, the influence of the period of puberty is generally marked, and the attacks becoming more frequent; is that your experience?

A. I don't know as I could answer you unqualifiedly as to that.

Q. Isn't your knowledge sufficient to enable you to answer yes or no?

A. It is to this extent: That I have knowledge of other authors controverting his statement.

Q. Specify them.

A. I cannot do it. I have never had occasion to treat children in general convulsions. It would have been a great help to me in understanding epilepsy in children.

Q. Doctor, are you not directed by all authorities to search carefully in the diagnosis of epilepties for scars, and particularly scars of the scalp?

A. No, I don't remember of being so directed.

Q. You said Hirt was a good authority?

A. I don't think I said he was a strictly good authority. I don't regard him as a better authority than any other author—not so good as some.

Q. Will you read, right on page 543, what Mr. Hurt says about a scar, the underscored portions, so the jury can hear? (Reading:)

287 "We must carefully examine the scalp and overlook no scar, however trivial, because any one may be the cause of the epilepsy." Do I read it correctly?

A. Eminently so; yes.

Q. Do you disagree with Mr. Hurt on that subject?

A. I have seen nothing to substantiate his position.

Q. You think he stands alone on that, do you?

A. I am sure I don't know. As I stated before, you can find anything you want in those books. Pretty near.

Q. Do you know Charles B. Nancrede?

A. Yes. He was my professor in surgery. I don't place myself in comparison to Prof. Nancrede, nor any of the authorities you may cite.

Q. Well, I call your attention to an article by Charles B. Nancrede, your former preceptor, in the American Text Book of Surgery, on Epilepsy; this is an article by Nancrede on epilepsy, page 539, and I would ask you to read the marked portion at the foot of the page; or I will ask you if, following me, I read it truly. (Reading:) "But, it must always be remembered that the irritation of the scar in the scalp is sometimes sufficient to cause the epilepsy, and hence, as a rule, the proper course of procedure is to prepare for a complete trephining with the same minute care that has heretofore been described as necessary in cerebral operations; but if exploratory incision, exposing the bone under the scar, shows no injury sufficient to make us think the brain is seriously injured, we should limit the operation to incision of the scar. Especially will this be proper if the scar be the site of tenderness on pressure and of the epileptic aurea, or if pressure on the scar produces a distinct fit. In

288 a major number of cases now reported, in which there existed no fracture of the bone, but only a scar in the scalp, the incision to the apex of the scar has been followed by cure."

A. He says, "in a limited number of cases." I agree with him.

Q. He says that cure has followed taking out the scar?
A. Yes, sir, I agree with him.
Q. But you don't agree with him in what he has to say about the scar being the cause of epilepsy, as I understood you, before?
A. Yes.
Q. Well, are you changing your views on that question?
A. I don't know that I am. I didn't intend to give the idea that I did not agree with Hirt on this same doctrine. I agree with all on the same page, 538, by Dr. Nancrede, as follows: "As a rule the epileptic attacks do not make their appearance until some months, or even years after the accident."
Q. Let's see if you agree with all of it. We have got something in here (reading): "And the early attacks are not only less frequent than the latter ones, but are often unattended at first by loss of consciousness, *petit mal*, and only after a time become fully developed epileptic attacks. There is reason to believe that even slight accidents may sometimes produce epilepsy, presumably through the agency of cicatrix in the dura or in the brain." You endorse that doctrine, do you?
A. Yes, sir. The authors named in that book are all recognized as standard writers. There is no doubt that a scar in the scalp or any place else may be an exciting cause. That is the truth.
Q. Doctor, don't you know that a blow on one side of the head may produce a fracture of the inner table of the opposite side of the head?
A. No, I never heard of it.
Q. What is the doctrine they call coutre-coup, or counter-
289 stroke?
A. I am not familiar with it under that term. I don't know much about that. I am not familiar enough with it to make a positive statement. I brought here a piece of property; it does not belong to me. I think it belongs to the State; I am not sure. I am willing to admit that the skull may be pressed down and leave an impression on the brain matter, and the skull spring back to its place.
Q. Wouldn't that be more likely to do that in the case of a young person than an old person?
A. Oh, scarcely enough to emphasize, it might.
Q. What is known by the word traumatism? Explain that.
A. "Traumatism" means physical injury; that is the widest interpretation of it.
Q. Now, I ask you if it is not laid down there is no question but what epilepsy may follow traumatism, or physical injury.
A. That is the general belief, yes, sir.
Q. Either quickly or after many months?
A. Just how many months I could not say; but it has followed.
Q. And isn't that the general statement by doctors—"either quickly or after many months"?
A. I think that is the most common statement. I think an interval of six months might elapse. It is so laid down in the authorities. I know something of an authority by the name of Decosta.

I have not read that authority to any extent. Epileptic seizures are regarded as incurable, generally; and doctors lay great stress on physical injury to the brain as developing epilepsy; and authorities even go so far as to speak of the enormous importance of traumatism in inducing epilepsy. It is very widely believed.

Q. Isn't it laid down that great dread will increase the
290 force of shock?

A. I should not wonder that you could find that.

Q. I call your attention, then, to what he said on that subject about hair in his System of Practice, Therapeutics, page 471, as follows: "Great dread, on the other hand, accentuates the shock"—that means "increase," doesn't it?

A. It is true, as the author says, that dread will increase the force of shock in case of injury. It may be, for all I know.

Q. Haven't you known cases, Doctor, and are not the books full of cases where simple fright has resulted even in death?

A. No, sir; I know of no such case. I have heard such cases alleged. Reputable books probably lay them down as actually occurring. I haven't any recollection of them. I should assert that a large dog making a savage attack upon a child under five years of age would be sufficient to induce great fright.

Q. Isn't it commonly laid down in the books, some of them, as one of the exciting causes?

A. What, fright?

Q. Fright, and by the menacing attitude of the dog.

A. You have found a case that I have not seen, then.

Q. I may have such a case here from Hirt. You may see if I read correctly. I read from page 544: "It is well known and beyond question that psychical influence may be come the direct cause of epileptic seizures; though how and why, we do not understand. The most important of these is fright, which, in numerous instances, has been shown to be the cause of the disease. But how shall we explain the instances in which persons perfectly healthy up to that
time suddenly become epileptics in consequence? The ex-
291 citement of a shocking spectacle or a dangerous situation, an assault by robbers, or the menacing appearance of a fierce dog, and then remain so during their whole life in spite of all treatment." Are you familiar with that?

A. I am now, yes.

Q. Well, what do you say about that; do you say that it is a correct statement of the causes that might produce epilepsy?

A. It may or it may not be. It does not follow because it appears there.

Q. You still stick to the measles theory of this case, in the light of that doctrine?

A. I have not announced any measles theory.

Q. I will ask you if you are familiar with the work of Smith on the Diseases of Children.

A. I have never read it, no. I know of such a work. He is professor of diseases of children, Bellevue hospital. I know that col-

lege. I know all about that college. He is regarded as one of the authorities.

Q. I call your attention to what Smith says, page 579 in his work on Diseases of Children, with reference to fright inducing epilepsy in children; under the sub-head "Mental emotions," he says; "Fright, or great excitement from whatever cause, is the most common and potent of the immediate causes of epilepsy. It produced the first convulsive attack in 157 of Gower's cases, or not more than one-third of those in which an exciting cause was assigned. This cause is operated chiefly in the periods of childhood and youth, when the emotions are strong, and in females more frequently than in males." Do you assent to that doctrine?

A. I know of no proof of the standpoint he takes there. He simply makes an assertion.

Q. Do you question it?

A. From what experience I have had, I would.

292 Q. Do you agree with him that this cause of fright is operative chiefly in periods of childhood and youth?

A. If it is operative at all, it might be that it was.

Q. I present you a work of "Ross on Diseases of the Nervous System." That work is a recognized commentary on the subject?

A. What date is it?

Q. I think about 1872 somewheres.

A. No, it is no authority. Scarcely any authority.

Q. Member of Royal College of Physicians in London by James Ross. Do you know anything about it?

A. Of that issue, no, I don't know anything about it. I have referred to a later work of his, not of any such antiquated one at all. I call 1882 antiquated; in regard to nervous diseases I should consider it so, certainly.

Q. I ask you if you agree with him, with his statement of the doctrine, in vol. 2, page 914, as follows: "Of the exciting causes of epilepsy, profound emotional disturbances arising from fright, grief, hope and anxiety, is the most frequent and important. The first attack of epilepsy often appears after a sudden fright. This cause is most frequently in operation under twenty years of age, and the female sex is especially liable to be effected by it." Do you disagree with him on this subject?

A. I do not.

Q. You probably then agree?

A. I say I agree on this point; I don't agree that fright is the principal cause. I don't necessarily oppose that because my knowledge of the science is different from the way these men lay it down. In all of my own experience I never have found a case in which fright was said to be the cause.

293 Q. In other words, authorities I have named, like Hirt, Decosta, Nancrede, Smith and Ross, saying that fright is the most important cause of epilepsy—does it occur to you to modify your views on that subject?

A. No, sir; I know Dana very well. His work is regarded as a standard work.

Q. I ask you if he does not lay it down, on page 42, as follows (reading): "Mental shock, and especially a fright, oftener than severe bodily injury, leads to the development of functional curoses"——

A. (Interrupting.) That is not epilepsy always. That is not always a nervous disease. It may or may not apply to the nerves.

Q. Is that a correct statement of the general principal, as you have gathered it from your experience?

A. No, sir.

Q. So that you oppose Dana, as well as the rest?

A. Certainly.

Q. I ask you if you have not taught pupils from this very book.

A. I have taught pupils from that book; yes. Not on nervous diseases, but on nervous anatomy. I don't know that it would particularly strengthen Dana that he seems to stand in with Hirt, and Smith, and Ross, and Decosta on this particular doctrine of the effect of fright. I know that Dana is recommended as one of the works to students, probably by Dr. Herdman, of Ann Arbor.

Q. Doctor, isn't it true that the most essential element in the epileptic seizure is the loss of consciousness, and the most characteristic?

A. Why, I should not ascribe more importance to unconsciousness than I would to convulsive movements. They both are seen in connection with the epileptic state.

Q. Here is a work I think probably as recent as you could wish for. It is by Wood & Fitz on the Practice of Medicine. Wood is professor in the University of Pennsylvania, and Fitz from
294 Harvard university. Are you familiar with the book?

A. No; I have not seen it. That is a very recent work. I know those universities; they are among the best in the land.

Q. I call your attention to what they say on page 421 with reference to unconsciousness, as follows: "The most characteristic and essential feature of the epileptic paroxysm is the loss of consciousness, and yet without doubt during an epileptic attack consciousness may be preserved." You don't agree with that; that it is the most characteristic and essential feature of an epileptic paroxysm.

A. It never occurred to me that it was. I have been accustomed to ascribe as much importance to convulsions, although we can have an epileptic condition without the convulsion at all.

Q. But when you find the unconsciousness and the convulsions coexisting, you consider it very strong indication of epileptic seizure, don't you?

A. Not necessarily of epileptic seizure; no sir. There are other seizures besides that.

Q. When you find frothing at the mouth in connection with the unconsciousness and the convulsions, then you are all the more persuaded that it is epileptic, are you not?

A. Depending on other conditions.

Q. Supposing, also, the pupils of the eyes are dilated?

A. That is immaterial. It has no weight.

Q. It would have no weight. Supposing there was an evacuation

the bowels and bladder as an additional factor, would that make look more like an epileptic seizure?

A. Not necessarily.

Q. Can you name a single factor in addition to the dilated pupils, htening and twisting of the muscles which you call convulsions, unconsciousness, the frothing at the mouth, and the evacua- tion, that would make it an epileptic seizure?

A. Yes, I would add the elements of known value as the use of the seizure.

Q. Doctor, suppose you were called upon to determine what kind a seizure the child had had and were given those symptoms, and thing else; what would you say?

A. I should say that the child were suffering from spasms or con- ulsions. Branches from the fifth cranial nerve supply that portion the scalp where the child's injuries are. Those nerves extend ross the region covered by this scar. The nerve filaments torn by is injury are quite innumerable. And they are cranial nerves. here are no other nerves supplying this region except cranial erves. The fifth nerve is the largest of all the cranial nerves. hat is the one that supplies this particular region. So that the rgest cranial nerve was reached by this injury. The fifth nerve said to be the great sensory nerve of the head and face. The one at was injured in this case. I believe I have said that epilepsy ay be produced from scars; and I believe I have said that the cer- ain passages you read were good authority. And you have seen, lso, from my examination and the authorities referred to, that in- uries to the outer skull, injuries to the inner table of the skull roduced by a blow or an injury, taking effect upon the outer table, ay induce epilepsy.

Q. And we have seen by all these authorities and your examina- ion that fright is one of the most important of the existing causes f epilepsy. Is that true?

A. You may have so concluded from the authorities you cite. I don't know that you could from what I said.

I notice where the point of the angle is here on the skull (Ex. 3); this is approximately the place the scar is on the child's head. 296 The furrow right underneath the apex of that scar is caused by the meningeal artery. The skull is much finer right over that artary than elsewhere. It probably is. It would naturally re- quire much less force to cause an injury right over that artery than on either side of it.

Q. Now, isn't it laid down in the books, Doctor, that injuries to the skull with a sharp instrument are more liable to produce in- juries than blunt instruments?

A. Yes, sir. I should think it would be considered so.

Q. Well, according to your own answer, the tooth of a dog would be much more likely to inflict injury to the brain than the same blow by some blunt instrument?

A. No, sir.

Q. You have the advantage of others. Your salary runs on whether you are at work for somebody else or not?

Mr. STEWART: I object to that as incompetent and insulting. He didn't know it, probably.

Q. Now, Doctor, coming back to your experience. Where were you born?

A. I was born at Port Nugglesone, Elgin county, Ontario.

Redirect examination of Dr. ARTHUR MCGUGAN:

Q. May all symptoms which were discovered as occurring in this case from the general convulsions of the child, could you give us concisely, the reasons why some authorities ascribe to fright such an important part in the execution of epilepsy?

A. From the "causation" of epilepsy, do you mean?

Q. Yes.

A. Well, in the first place I should say that it has been only recently that the nature of epilepsy has been thoroughly understood. There are only one or two text books, neither of which have
297 been shown here today, but what describe epilepsy as a nervous disease, and is not a nervous disease always. The causation of epilepsy has, ever since the time of the Bible, when it was ascribed to devils, seven or more, there has been very much doubt as to the real or principal factors in its causation. And we have passed through a period of readjustment of our views; passed through etiology from the time when they ascribed it to demoniacal possession, until the time we ascribe it to fright and other emotions, and up to the present time, when we ascribe it to a defect in heredity; history of the persons or some physical irritant in the patient's system. Of the authorities cited and exhibited here today only one of them is of sufficient recency that has any weight in my mind, or in the mind of any other medical men who pretend to be up to date; the most important investigations as to the beginning of these toxines upon the causation of epilepsy or upon the peculiar kind of spasm that this child seems to have had is still being developed and have not yet reached the state that they will finally reach. The only means by which a person can keep track of this progress in the building up of knowledge concerning their causation is in the reading of journals—medical journals having to do entirely with such disorders, and interchange of thought with men whose occupation, whose profession brings them constantly in contact with this peculiar class. There is scarcely any of the older authorities that you may pick up, but what you can find out almost anything that you wish so far as the causation of epilepsy is concerned.

I might say though that there is no authority of which I
298 have any knowledge that mentions fright as being a cause of eclampsia, or infantile convulsions, with which this child has been affected. The two most recent works on nervous diseases in speaking of epilepsy make no mention whatever of fright as a causation of epilepsy. Those of the older ones that do speak of it as a cause, refer to it, I take it, as an exciting causation of convulsions, after the disease has been once established; but not as a factor in the establishing of the disease; although I do know certain au-

thorities particularly some of the older ones, still cling to the theory of fright can be an exciting cause and the initial—the beginning — convulsions. We are not yet in entire light as to the nature of the forces at work producing the convulsions in all these cases. We do not know what produces them in some causes, because it has been demonstrated by laboratory experiment. I think it is going too far to ascribe a convulsion entirely to a mental or psychical causes unless we are—you can cross that out.

This subject of epilepsy and its causes furnish a special field of investigation and scientific study in and of itself. Our original notions and opinions as to epilepsy, the same as a great many other so-called nervous diseases, has perhaps undergone more change than diseases of any other character; because we have, as it is termed—have been more in the dark as to the causes of nervous diseases than any other particular form of disorder. The onward march and development of the science in this direction prove that the hypotheses and writings that have gone before on the subject have been incorrect.

I will explain why the tooth of the dog could not have fractured the inner table of the skull in this case. (Witness takes
299 skull.) Because a dog's jaws operate at this angle. (Illustrating.) Because we have here a contour of a certain form of injury, the force expended upon it could have been nothing else but a slanting force as I demonstrated to you. And because the surface of the skull is so slippery from the blood and other fluids that it would be very hard to produce the injury.

Mrs. HELENORA WILLIAMS, being sworn as a witness on behalf of the defense, testified as follows:

Direct examination by Mr. BACON:

I am fifty years of age. My home is in Niles and have lived there two years, and near Niles about 29 years. My husband's name is William E. Williams and he is a farmer. He has been teaming in Niles. I know this house where the Fye family live. I know the rooms Mrs. McMichael occupied in that house. I occupied them. I have brought up four children. The youngest is thirteen. When I occupied these rooms the youngest one of my children was with me. Our family lived in that house the 27th day of August, 1896. We occupied them about four months. I think we moved out the 26th of December. While we were living in those rooms I saw the little child, Ruth, frequently. She was with my girl, Katie. She played with her and associated with her a great deal. She was in my part of the house a good deal. I have seen the little child in the court here. I was here in the court-room all day yesterday, while court was in session. I saw and noticed the little child.

Q. Now, as to the nervousness, how does her appearance here in court compare to what it was when she was there in the house with you?

A. I don't see no difference in it. She had ailments while
300 she was there in the same house with me. They doctored her for worms, while I was there. Probably three or four times.

Q. How was it—how did she appear when she had—what did you see in her at those times?

A. She was feverish, and would have kind of flighty spells as if she was dreaming. The condition of her cheeks and hands at these times were red and hot. I felt of her hands and head. About the time we were moving out she wasn't very well. She was complaining. She was complaining about being sick; having fever. She seemed to be feverish and wanted to lay down a good deal. I notice the child's habits in eating. She would eat whenever she wanted to, and most of the time. She ate between meals. She would eat bread and butter, cake, most anything she wanted. Her mother, I suppose, gave it to her. Her mother was with her—she would give it to her. She was the only child.

Cross-examination by Mr. GORE:

I did not tell anybody that I knew this child was once treated for worms. I don't know how they found it out. I have not told anybody I knew nothing about it until Mr. Bacon came after me. It is the commonest thing in the world for a child to have worms, and none of them had fits on account of it. I insisted that Ruth had worms. I did not induce Mrs. Fye to invest in my worm remedy.

Redirect examination:

She told me she got the medicine she did use of Dr. Smith. I talked with her mother about that ailment of the eye, and her mother talked with me about it. It would show itself in
301 this way. It would come up in a small pimple like—something like a sty. It was plainly noticeable.

Recross-examination:

I have seen children have stys. They have them on any one of the four lids of the eye; besides stys, they may often have little red spots on their lids, and many of these little formations may come on any of these lids.

ELLEN WOOLETT, being sworn as a witness on behalf of the defendant, testified as follows:

Direct examination by Mr. BACON:

I am fifteen years of age; sixteen next month. I have lived most of my life at Bertran; that is between Niles and South Bend. My father is a mail-carrier. I worked for Mrs. Fye four or five weeks ago, if I ain't mistaken, in the same house she lives in now. I worked for her two days, I think. I was employed to take care of the child. Mrs. Fye was at the paper mill. This little girl,

Ruth, that I have seen here in court, is the same child that I took care of. I had the child with me; did not stay there at the house all the time; I went away sometimes, to my uncle's. His name is Stramp. I would start to go there about ten o'clock and come back about one.

Q. Now, what do you know as to this little child having anything to do with dogs while you were there?

A. Why, she played with dogs.

Q. Where did you first—where did you see her play with them?

A. Up to my uncle's. He owns a dog. The child was not frightened or afraid of it in any way. I saw her when dogs came around at her own house. She was not scared or afraid of it in any
302 way. My uncle's dog was a puppy—good sized one. A fair-sized dog.

Q. Now, how was it about the child eating, while you were there?

A. Why, she would eat between meals.

Q. What did it eat?

A. Oh, bread and butter, meat and cookies—such stuff as that. I fed it. Mrs. Fye told me to. She told me to let it have anything it wanted to eat. I was here in the court-room all day yesterday. I noticed the little child.

Q. Was it any more nervous, here in the court-room, than when you were taking care of it?

A. No, sir.

Q. Any more fidgety, I mean, scared?

A. No, sir.

Cross-examination by Mr. GORE:

Q. Mrs. Fye told you to let the child have everything it wanted?

A. Yes, sir.

Q. You didn't think she wanted to gorge the child?

A. No.

Q. She didn't tell you to urge any food upon it that it didn't want, did she?

A. No, sir. I did not think it strange that a little child like that would eat between meals. I have brothers and sisters younger than I am; they all like to eat between meals. I never saw a child that didn't. I used to do it myself.

Q. Well, Ruth didn't seem to have any special fondness for dogs, did she?

A. Yes, sir.

Q. She would chase after them, I suppose?

A. Yes.

Q. Did you ever see her catch any?

A. No, sir. My experience with Ruth is limited to those two days.

303 Q. How many dogs did Ruth chase that day?

A. Two.

Q. Did she make them humm?

A. No, sir.

Q. Now, your entire opportunity of knowing anything about Ruth was about four or five weeks ago today?

A. Yes, sir. I am not 16 years of age yet.

Dr. FRED R. BELKNAP, being recalled for further examination, by Mr. Stewart, testified as follows:

(Last answer read.)

Q. Do you get from that where you are at?

A. I think so. I think that answers all the parts that would refer to the injury itself.

Now, the so-called shock or fright has been assigned as a cause for this spasm. Shock is partial death. I don't think that that has been in anywise hinted at by any witness present in this case, therefore, for the sake of brevity, leave it out. Fright, however, has been—fright may be, and frequently is, the cause of spasms of different sorts. We read of a great many cases where adult ladies of a hysterical turn of mind are thrown into spasms by fright. There are cases which we read of, that are frequently thrown into epileptic spasms by fright. There are cases in which people are thrown into a state resembling hypnotism by fright; I think they, either from voluntary powers or involuntary, can throw themselves again apparently into a state resembling hysteria; these results have followed immediately—that is, what physicians say immediately. Here we have a case in which the child is frightened in December, and, so to speak, forgets all about the fright, or at least does not show it to any more extent than we could naturally expect, and suddenly wakes up in April, and has a spasm. This is, I am willing to say that I believe it an impossibility. It is in my opinion an impossibility.

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Now, the other causes spoken of, which might operate from measles and a febrile condition existing at the time of these spasms. As a rule measles are not followed by spasms. It is possible that they might be, because the kidneys, the lungs, and the brain are all liable to be left in an impaired state as to their functions, after measles; and if a febrile condition followed, I can readily see how any traces of the measles and their effects upon the nervous system had been left that febrile condition might more easily include a spasm. A child, however, with a high fever is very liable to have a spasm; and when a physician is called upon to see a child with high fever and then a spasm, we think nothing of it, because it is so frequent occurrence; that would be the natural inference if a person was—if a person was called upon to see a case of that sort. I think that answers that question sufficiently. I might go into detail, and into the domain of theory for days upon this subject, but I am afraid I should get lost, as well as the jury.

Q. Doctor, what have you to say as to whether or not this subject of nervous disease or epilepsy is one about which different medical minds differ, as to causes, and so forth?

A. It is but natural that a man affected with an incurable disease should seek for every measure of relief; it is but natural that the

physician to whom he applies should seek out every assignable cause, and should try their best, no matter how improbable the cause for that disease, upon this hypothesis. I fancy fright has been often ascribed as a cause of epilepsy. I can readily con-
305 ceive how a person had that tendency that he has a spasm, could be excited by fright, as well as any other, so far as acting as a cause to the disease. I don't believe it.

Q. What do you say as to whether or not there must be a fertile field for the disease before it can—an exciting cause can operate to produce it?

A. That is a matter that any one's common sense would answer for them, as well as any medical knowledge. It is a matter of common experience.

Q. Now, Doctor, we will suppose that the mother of this child had a sister die in the asylum insane, she has a blood cousin now in the asylum insane; she has had three brothers and two sisters die with consumption, and we will suppose that this child was bitten in the scalp by a dog on December 14, 1897; dreamed about the dog at night for some time thereafter, but suffers no physical discomfort beyond what would be caused by such wound and shows no more evidence of a permanent injury than is shown by this child—has an attack of measles and is taken to her bed with them, the 24th day of March next, prior to the 14th day of April, and has such a spasm as has been described on said April 14th; and is found by the attending physician to show all the signs of great disturbance of the stomach and intestines, such as is known to follow injudicious eating and drinking; that the child is known to have been allowed to drink beer, and to eat anything at any time of the day, just as it may wish. What do you think as to whether the injury or fright had or could have had anything to do with the spasm?

A. I don't think it could.

Q. Doctor, we will suppose that the injury at the time it took place, was sufficient to injure the skull, and the inner table of the skull, and make a depression upon the brain. What do you
306 say, as to what time it would take, thereafter, before evidence of the injury would be shown by the child?

A. It would probably be immediately, but not certainly—that is, within a few days; but not absolutely certain. There could be fever following, or high temperature, in all human probability.

Q. Doctor, we will suppose that the attending physician found the child with this wound on the head, made a careful examination of the skull under the flap and found that there was no abrasion, no injury, and no depression other than natural. What do you say as to whether or not there would be likely to be any injury to the brain resulting from that injury?

A. Why, there would not be likely to be.

Q. Now, we will suppose again that the attending physician cleansed the wound with anticeptics, put back the flap, sewed it up and at the expiration of within eight days the wound healed so

that the doctor dismissed the case. What do you say, as to whether or not that showed a healthy condition of the scalp?

A. It did.

Q. Would you be any more likely, Doctor, to discover a fracture or depression from cutting that wound open afresh now and making an examination of the skull than could have been done at the time the injury occurred?

A. I should think not. I have seen the child and made an examination of the wound. I do not see any necessity for any such operation being had upon the child to determine that question. I have observed the child about the court-room throughout the trial.

Q. What do you say as to whether or not it gives any evidence of an abnormal condition, either mentally or physically outside the wound itself?

A. I have not observed any abnormal evidences. I was present a week ago yesterday, at the Kalamazoo house, at the exam-
307 ination of the child. I did not materially assist them in making that examination. I was present and observed everything that was done by the others. The most conclusion that I was able to arrive at from that examination was that the wound was in a perfectly healthy state, and that the child seemed to be perfectly well.

Q. Now, Doctor, we will suppose that this child was bitten or received that injury on the 14th day of December, 1897, that within eight days the wound healed so that it was dismissed by the physician attending; that the child was about as usual, that it was allowed to eat between meals at its will; that on the 24th day of March it was taken down with the measles, and confined to its bed the usual length of time; and that on the 14th day of April following, the child went into a spasm, crying to its mother, "Put that dog out, mama, put the dog out, turn the dogs out of the room;" that it had a high fever, flushed at the face; frothed at the mouth, if you please, and when the attending physician got there, found that the child's tongue was badly coated with a yellowish substance; that its breath was foul and gave indications of a disturbance of the stomach. What do you say, as to whether or not the injury received on the 14th day of December, prior to that time would have anything to do with producing such a spasm as is described?

A. With the intervening history of good or fairly good health, or at least of no symptoms that would be directly attributed to the injury, and which would be a direct cause of this spasm, I could not see any connection between the two.

Q. What would you attribute such a spasm to?

A. The most natural cause would be to the intestinal indi-
308 gestion, although a child—the fact that the child eats between meals, that is the greatest cause of intestinal indigestion. Yet, most all children do it more or less, and yet not all children have spasms as a rule of that age; this spasm at that age, one of two things is the trouble—with it. It is very sick or else it is not healthy.

Q. What do you say, as to whether or not spasms such as is de-

scribed here the child had on the 14th and 16th days of April, would or would not be the natural consequence and result from the injury received by the child on the 14th day of December, 1897?

A. I have already answered that question. I thought, that they would not. I went further than that, I said I did not believe it would be a possible result; that is not, if—not with the condition which prevails in the child and the circumstances as related.

Cross-examination of Dr. FRED. R. BELKNAP:

I was not subpœnaed to come here. Colonel Bacon asked me to come up here and look this child over.

Q. I suppose that either you or your father, one or both of you, have treated the Chapin family in Niles, at various times?

Mr. STEWART: I object to that as irrelevant and immaterial.

The COURT: That would be competent to show any relation with the defendant.

A. I don't think that I have. My father has, at one time, quite a number of years ago.

Q. What do you say about this—were you ever called there?

A. Never that I remember of.

Q. In either of the Chapin families there?

A. No, sir. I have known them all my life. None of them accompanied me on my trip to Europe. I am not frequently
309 at their house. I think I have been in their house once since they live there. I have no particular hostility to the Chapins.

Q. Your relations, then, are neighborly?

A. Why, if by that you mean that we live near them, we do. My wife calls there sometimes; Mrs. Chapin I presume calls at our house, so far as I know.

"Epilepsy is a disease manifesting itself by explosions of the nervous system."

Mr. GORE: Explosions of the nervous system?

A. Yes, sir. That is the word I used. I don't know, but perhaps I had better change that expression and say that it is a disease, as you may call it—nerve explosions or explosions of the nervous system attended sometimes with and sometimes without spasms, but always with unconsciousness.

Q. So that if I properly interpret your definition, it is a convulsion or a nervous explosion attended with or without convulsions, but always with unconsciousness?

A. Well, that is practically true, I think.

Q. Well, Doctor, the child on the 14th was taken with convulsions, uttering a cry; she became unconscious, remained so for five or ten minutes; what portion of your definition of an epileptic seizure is lacking in these conditions, any?

A. I guess you don't want to ask exactly that question.

Q. Well, I do. I ask it—put it flat.

A. Well, there are a great many conditions lacking.

Q. Now, understand the question, what elements of your definition are left out?

A. Oh, elements of my definition? Yes, I think they would all be there that I have put in there.

Q. Yes, sir, what kind of a convulsion was it, having all those elements present?

310 A. Why, you might well include even more symptoms of pronounced convulsions.

Q. Doctor, please answer. I want to be brief. What kind of a convulsion was it having those elements present?

A. Probably a general convulsion of children commonly called eclampsia, or spasms of children.

Q. Then in what respect did this seizure differ from a typical epileptic convulsion, as defined by you?

A. I don't think, in a great many cases, anybody could tell the difference.

Q. Now, another symptom of epileptic convulsion is relaxed sphincters, isn't it—frequently present? I mean frequently one of the accompanying symptoms.

A. I should say probably; yet I don't know how frequent.

Q. So, in addition to the explosion, the convulsions, the unconsciousness, if you were able to add to (such) a case the relaxations of the sphincters you would be more strongly inclined to regard it as an epileptic seizure, would you not?

A. No, I don't think I should.

Q. Do you doubt it?

A. Yes, sir. I believe it would in a child.

Q. The more epileptic symptoms present would create the greater doubt in your mind as to the character of the shock. Is that right?

A. No.

Q. Then how?

A. If I should find symptoms present that was more commonly present in general convulsions of children than it was in epileptic, I should think it was more distinctive—would help me more. If I should find a condition or symptom present that was more commonly to my belief present in the general convulsions of children than in epilepsy, I should regard it as pointing more to the spasm being of that character than to its pointing to its being epileptic.

311 Q. Do you mean to say that the greater number of characteristic symptoms you find in a convulsion you attend, of epileptic character, would enable you to say it was something else?

A. Oh, you have used the word "characteristic" there now.

Q. Yes, sir.

A. Do you mean to say that movements of the bowels are characteristic of epilepsy?

Q. Yes, sir; I do mean to say that the authorities laid down that evacuation of the bowels and bladder is a frequent accompaniment of an epileptic seizure.

A. Oh, frequent. True, I answered that it is sometimes a symptom.

Q. In addition to your explosion, to your spasms and to your unconsciousness, if you were to add the evacuation, wouldn't it tend more strongly to make you think it was an epileptic seizure?

A. I answer no.

Q. All right; that is flat. Are you not, Doctor, in your practice, always glad to discover as many symptoms of a particular disease, all tending to characterize and point out that disease, as possible?

A. I fancy that is human nature; probably I am.

Q. In addition to the explosion, the loss of consciousness, to the spasms, and to the evacuation, suppose you find in a case frothing at the mouth. Wouldn't that more clearly indicate to your mind an epileptic seizure?

A. Taking the terms as you express them, yes.

Q. Now, then, Doctor, if, in addition now to the explosion and the loss of consciousness, to the spasms, to the evacuation and the frothing at the mouth, you find dilated pupils of the eyes, would not that tend more strongly to characterize that convulsion as an epileptic convulsion, in your judgment?

A. No.

312 Q. You understand, don't you, Doctor, that dilation of the pupils is nearly always an accompaniment of an epileptic seizure?

A. Yes.

Q. Well, then why did you answer that adding that accompaniment to the others that you have designated, would not tend more strongly to convince you that the convulsion was an epileptic one? Give us a reason for that.

A. Well, it is almost impossible to explain myself there, because the way that the question is put—I answered the question on the supposition that I was distinguishing between a general convulsion to children and epileptic. Dilated pupils occurs in both. But if I should want to make out a typical case of epilepsy, that is, if I should want to seek for all the symptoms and try to substantiate a diagnosis in that line, I should be more firm in my belief that was epilepsy if the dilated pupils existed, I presume; although it is not necessary to epilepsy, I don't think.

Q. If that existed, you would be more positive in your belief that it was epileptic than otherwise?

A. Asked in that way, yes.

Q. Well, that is just the way I want to ask it. I want to ask you that if these symptoms all being present would not tend to lead your judgment to regard that as a case of an epileptic seizure than if only a few of them existed, or were present?

A. The more that are present the more firm I would be in my belief that it was epilepsy.

Q. Then if you found an explosion, and the spasm, and the unconsciousness, and the evacuation of the bowels, and the frothing at the mouth, and the dilation of the pupils present, then an unconsciousness extending from five to fifteen minutes, and the child remaining very lifeless and pallid thereafter, would that tend

313 even more strongly to make you believe it was epilepsy or pil e ptic seizure?

A. I have already conceded——

Q. Please answer.

A. Yes.

Q. Then, Doctor, putting all these things together that I have asked you, laying aside now all cause of epilepsy, isn't it your honest judgment that the seizure of the 14th was an epileptic seizure?

A. No.

Q. No. Because all of the essential characteristics of the seizure were present. I say, laying aside all question or mention of causes; taking just these symptoms, as to your honest judgment as a physician, if the seizure of the 14th was not an epileptic seizure?

A. I have already answered it.

Q. You stick to "no," do you?

A. Yes, sir.

Q. I ask you, Doctor, if you were called upon to treat a case of convulsions and you should find all these conditions present which go to characterize an epileptic seizure, would you feel justified in telling your patient that he need apprehend no ill effects from seizure of that character and not to be on his guard against epilepsy?

A. Possibly I neglect my duty in that line; but I don't know that I have given people any such warning in the past.

Q. Now, Doctor, is that all the answer you care to make?

A. I think that practically answers the question. Authorities differ greatly on whether or not any structural changes in the brain are produced by epilepsy. It is a safe position to take that authorities differ on that subject. I could not mention any definite name or authority, I don't believe. I have been studying this question for a week or so; the points bearing upon the question, yes. One epileptic attack predisposes to another, I should say. I don't think there is any doubt about it. No two attacks are exactly
314 alike. The most essential characteristic of an epileptic seizure is the unconsciousness.

Q. You differ with Dr. McGugan on that?

A. Well, I should hate to differ with him on it if he says it is not.

Q. Well, he says it was the spasms. Now, wouldn't it be more likely to be the unconsciousness because unconsciousness is always present, whereas spasms are not always present—according to your definition?

A. That would be my idea about it. I don't want to split any hairs on the subject. It is true there may be fever in epileptic seizures. I think it is true that frequently in these cases the temperature rises distinctly. The intellectual future of an epileptic is a serious one. Distinct epilepsy practically is an incurable disease, I think. I should say that it is a rare thing that there is any recovery of power by an epileptic, once lost, and that the symptoms would usually be permanent.

Redirect examination of Dr. BELKNAP:

Q. Doctor, you heard of Dana, have you?

A. Yes, sir.

Q. On nervous diseases. Do you know whether he says anything about there may be epilepsy without unconsciousness?

The COURT: Do you propose to have that read in the presence of the jury?

Mr. STEWART: Yes.

The COURT: I don't think we should go into that any more. I think that has been gone into a great deal further than it should have been permitted; the court did not want to dictate to counsel how they should manage their case, but the testimony is clearly
315 inadmissible if objected to; I do not think the court ought to permit a greater consumption of time with it simply because counsel do not object to it.

Mr. STEWART: If your honor please, we have no disposition to go into it; of course I knew it was objectionable at the time, but we wished to allow counsel on the other side all the latitude possible; and having exercised it, we simply sought to meet it; that is all.

The COURT: I think sufficient latitude has already been taken in that regard. It is better to stop it right here.

Q. Suppose you are called to see a young child who has just had a spasm in which it entered with several utterances, that is, not just one wild yell, but several utterances; that it was unconscious only a very short time; that it had a very high temperature, say 104 or 105; that there were manifest disturbances of the stomach and intestines and a history of overeating; would you class it as an infantile or epileptic convulsion?

A. I should class it as an infantile convulsion, probably due to poison from the intestinal poisons generated.

CHARLES A. CHAPIN, being sworn as a witness on behalf of the defense, testified as follows:

Direct examination by Mr. STEWART:

I am the defendant in this case. I reside in Niles, Michigan. I am fifty-three years of age. I am the owner of the dog known as "Duke" in question here. I have owned that dog six years. He is a St. Bernard. I purchased the dog when it was six weeks old. I have had it about six years. I have lived at Niles about fifty-two years.

316 On the 14th day of December last I was in Chicago. I went to Chicago on the 13th day of December and returned on the 15th. The first that I learned that my dog had been at the home of Mr. Fye was on my return from the depot. I gave instructions to those in my employ before I left home not to take the dog about the town. I gave instructions to those in my employ, that is, Alice Harcourt understood it, and also the man who works in the stable, that the dog should not be taken off of the premises or allowed to go off from the premises, and if he was seen off from the premises to go after him at once. Sometimes he would escape through one of the gates when people would come there to deliver

goods to the house, leaving the gate open. The dog has always been in a healthy condition since I have had him.

Q. What has been its food?

Mr. KNAPPEN: Wait a minute. If your honor please——

The COURT: I am waiting for an objection, if there is any.

Mr. KNAPPEN: We object to it as irrelevant and immaterial.

The COURT: I think the objection would have to be sustained.

I heard the testimony here of a couple of boys with reference to the dog having bitten them. I don't remember exactly the time. I remember the circumstance. I made an effort to ascertain the facts with relation to how it came about. I can hardly tell which one of the two was first; but I can remember the circumstances of both of them.

317 Q. Go on and relate what those circumstances were, if you please, and what you ascertained with reference to them.

A. I mean in regard——

Mr. GORE: I don't see that that is material.

Mr. KNAPPEN: It would be hearsay.

The COURT: It might be material, but I think it would be hearsay; that would be the objection; what he learned from inquiry would be incompetent, except it is proposed to show that he was not informed that the dog had bitten any one; if you propose to show that, that would be competent. The circumstances under which the biting was done I do not think could be shown by this witness unless he was present at the time.

Q. Mr. Chapin, what have you to say with reference to the disposition of Duke, the dog, as to whether he has manifested a ferocious disposition or tendencies that you know of since you have had him?

A. The dog is very kind; and so much so that he is in the house part of the time with the children playing with him. I have two small boys; one of them will be on his back and the other on the other end of his body at the same time. He never has attempted to bite either one of them or any member of the family. I never learned in any way of his exhibiting a ferocious tendency to bite or injure people. Alice Harcourt is one of the ladies whose name was mentioned here and whose affidavit was read as part of the testimony in the case. Effie Stevens was the other young lady with her, the young lady that was on the stand.

Cross-examination of CHARLES A. CHAPIN:

I know George Lambert of Niles, the attorney. I did not know that the dog made an assault upon his child. Mr. Lambert came to my house, but I never knew that the dog made what you

318 call an "assault." He complained to me that that dog had assaulted his little girl.

Q. He came there prepared to kill him, didn't he?

A. I don't know what his disposition was. He didn't show that

he had any weapons of any kind. I was there when Lambert came. He didn't say that the dog had bitten his child. He said the dog had injured his child. I did not make inquiries to find out whether his child was injured or not. I found there was a little scar or something, and I was told he merely put his paw upon her neck, or something of that kind; but had never bitten the child. I have testified that the dog was of a kind disposition. I know that he bit the Chambers boy, as the boy stated.

Q. And do you consider a dog of that kind, of a kind disposition, that bites children?

A. Sometimes a dog may have a cause for biting children.

Q. You think probably he had a cause for biting the Chambers boy?

A. Yes, and I went and see his father about it—I was told at the time that the dog—that the boy was jumping right towards the dog, and the dog was right in the way, so the boy said, or where he was jumping, and I suppose the dog thought that the boy was going to molest him in some way; so he simply done it in defense. I remember the time that the Exner boy was bitten through the arm. After that boy had been bitten the dog was running at large with my consent. He was not running at what you call "at large," because he would sometimes escape. He was at large thereafter at times.

Q. Now, Mr. Chapin, you say that he is a kind, and gentle dog. Will you please tell the jury, if that is so, why you instructed all your servants to keep him locked up to the time within the iron railing?

319 A. Because a dog that is allowed to run at large is not valuable for a watch dog; he is kept there for that purpose.

Q. So, it was not because he had bitten the Chambers boy, and not because he had bitten the Exner boy, nor assaulted the Lambert little girl that you ordered him kept in, but because he would not be valuable as a watch dog?

A. Well, my instructions have always been to keep him inside of the enclosure. The dog has not followed me around on the streets in Niles very many times, only going over from my place at night, I would take him; when I went to my father's I took him. I might take him elsewhere, but hardly ever.

Q. Isn't it a fact that he followed you in the daytime, along the streets of Niles at night?

A. Not very often. After this dog made the assault upon little Ruth, I shipped him to South Bend. I thought at that time he had made this assault. I have since changed my mind however. I did not send for him, he came back of his own accord.

Dr. ZELL T. BALDWIN, being recalled for further examination by Mr. Bacon, testified as follows:

In reference to the scar, the injuries to the head resulting in scars, I have had some experience in that respect. I have three cases of fracture of the skull, probably four or five cases of contused ones. I

am somewhat familiar with the authorities on the subject. I have never known of any fits of any kind resulting from scars. Scars on the head are common—scalp wounds, I think; they are about in the same proportion as scars to the rest of the body. Such a result as fits coming from scars is an unusual result I have not looked at the child's head in court here since she has been here.

320 (Witness examines the child.)

I have examined that scar now. There is nothing in its appearance indicating anything wrong. There is nothing in its appearance indicating any—need of making a surgical operation there. I noticed no extraordinary pinkness or discoloration anywhere. There are no indications from the scar at present that it could have produced a spasm that I can see. There is no reasonable chance, from what I know of such things, that it could or did.

And to the question addressed to me in relation to fits of a child from between four and five years of age, I would say that a period of uncónsciousness is common to both epileptic and infantile fits. They are common to both forms.

Q. The state that succeeds—is there anything in the state that immediately comes after a fit to indicate whether it is an epileptic fit or an infantile fit?

A. There is not in all cases; no, sir.

Q. Well, generally, how is it?

A. There are sometimes symptoms that we could diagnose one from the others, I think.

Q. What are they?

A. In nearly all cases of epilepsy, marked epilepsy, where the patient has been having a spasm for some time, or a series of spasms for several months, they are very marked with exhaustion, something similar to that following drowning; that is, the lungs do not have the usual function and the patient is exhausted and weak and sinks into a coma—quite a deep sleep; the pulse is very often irregular and the respiration or breathing is also irregular. Sometimes it is very slow, and in the case of infantile convulsion, accompanied by a high fever, what is called feberile convulsions,
321 immediately after the fever there is nearly always to be the same excitement that there was before, previous to an infantile convulsion; the patient will very often show signs of nervous irritability perhaps, variable; perhaps others with a slight jerking of the muscles for some time before, or such things will create a flurry of the nervous system, and this condition nearly always exists when the fever runs high; if the fever drops right down we lose those symptoms.

Q. Can a child with hereditary basic cause of epilepsy have an infantile spasm that is not epileptic?

A. As I understand you, a basic cause, a child's heredity. The child inherits more especially a tendency to a nervous condition; that condition may be either a condition of epilepsy or of St. Vitus dance, chorea or the different forms of insanity; that includes mental disease.

Q. Can it have an infantile spasm that is not epilepsy although it has this basic cause?

A. It can, yes, sir.

Q. What would the fact of high pulse and fever tend to show, which kind of a spasm—if it is immediately after—a very few minutes after the spasm?

A. It would tend to show infantile convulsion rather than an epileptic one.

Q. What is it about, whether or not the spasm, frothing at the mouth is common to both kinds of spasms, epileptic and infantile?

A. It is common to both forms.

Q. What is it about the symptom, the rolling up the eyes and being in the spasm, unconscious, being common to both kinds of spasms, epileptic and infantile?

A. It is common to both.

Q. Do children, in passing through an ordinary infantile spasm caused by indigestion, generally have a period of unconsciousness in passing through the spasm?

322 A. Why, yes, that period of unconsciousness may or may not be a contingent to all forms of spasms.

Q. How is it about while a child, such a child has a spasm, whether it is epileptic or infantile, how about its being conscious or unconscious generally, while it is in the midst of the spasm?

A. It is generally unconscious.

Q. How is the symptom generally called "frothing at the mouth" produced; what is it made up of?

A. Why, the saliva moving back and forth between the teeth, when they are clinched.

Q. Is there anything in what an ordinary witness might describe as frothing at the mouth which could not be naturally produced by one of the common spasms of children, from indigestion?

A. No, sir, there is not.

Q. If a child four to five years of age has a spasm caused by acute indigestion, can such a spasm be accompanied by the ordinary symptoms of an epileptic fit? Can it be?

A. Yes, sir, it can—you mean at the same time or right away afterwards, following?

Q. Well, either way. Describe it either way—both—whether it can be accomplished by the same symptoms which are seen in epilepsy?

A. Yes, sir, it can.

Q. In a child between four and five years of age, during an attack of acute indigestion, has a spasm, accompanied by unconsciousness, biting of the tongue, frothing at the mouth and convulsive struggles—would there be any reasonable way to decide whether or not such a spasm would probably be followed by permanent epilepsy?

A. The history of such cases show that they are not.

323 Q. Whether there would be a reasonable way to decide it just on that line, from those indications?

A. No; I hardly think it would be sufficient.

Q. Would the fact that no unconscious period followed the spasm,

but instead thereof a period of wakefulness and intelligence follow the spasm, tend to show in the case of a child four or five years of age whether the spasm was epileptic or not epileptic? If instead of unconsciousness after the spasm there was a period of wakefulness and intelligence, which would it tend to show?

A. Do you wish to include either fever or without fever, does it mean?

Q. We will say with the fever and with a high pulse after the spasm.

A. In probably all cases of epilepsy where the spasm has been severe, ranging from five to fifteen minutes, the system is so exhausted that the patient at once falls into a deep, heavy sleep. In a case where there has been a high temperature preceding the spasm, and the face—the pulse has been rapid, the face flushed and the eyes bright, and the whole system intensified by the excessive fever the accompaniment in an infantile spasm ensues, the same conditions nearly always ensue afterwards that they are had previous to the spasm; that is, the patient's mind is quick, and it is active, and the respiration is active, as well as the pulse full and strong; because the same nerve centres that are exhausted by the fever previous to the spasm are also exhausted by them afterwards.

Q. Suppose you were called to a case of a female child four or five years old, well nourished, bright, active mind; that in the previous history of nervous disorders you found the child suffering from a fever of about 104 degrees, flushed face, bright eyes, movements quick, mind clear, tongue coated with a yellowish and white
324 coat, saliva thick, tenderness over the stomach, a few minutes previous to that the child had a spasm of from five to fifteen minutes, during which time both sides of the body had been convulsive like, and that the head and body had been thrown backwards, and the pupils were dilated, the eyes rolled up, the jaws set, with frothing at the mouth, with unconsciousness, that spasm preceded by a cry, which cry or noise was repeated during the spasm, and that the fever subsided after some hours. What would you attribute the spasm to—which kind of a spasm, and your reasons for so doing?

A. The spasm would be one due to a condition of any infantile spasm or convulsion due to febrile action caused, without doubt, by the disordered digestion, which produced poisons in the system that had been absorbed and caused the fever.

Q. Now, there are two or three symptoms on this very child that were omitted that I asked you about; on the day of the spasm, or the day afterwards, did you examine the child's spinal region, and what did you find as to tenderness?

A. I didn't consider there was any tenderness over the spine whatever.

Q. How was its respiration and pulse on the day when you arrived—on the day of the spasm?

A. Oh, it was—I saw the child a few moments after the spasm occurred; I found the child with a bright—or a red, flushed face,

the eyes were bright, the respirations were rapid and the pulse was full and pounding, and the mind of the child was clear at that time.

Q. What was the condition of the gums and mouth?

A. There was nothing abnormal as to the gums, or mouth, except the saliva was thick and blue and the breath was offensive.

Recross-examination of Dr. BALDWIN:

325 Q. Doctor, isn't what we call the "inner table" of the skull much thinner and more brittle than the outer table?

A. It is thinner; yes, sir.

Q. And more brittle?

A. I should judge so.

Q. Isn't the outer table not only thicker, but more elastic?

A. It is more elastic; yes, sir.

Q. So that would be one reason why a blow on the head would permit the outer table to bend further than the inner table would be, would it not, and the outer table spring back to its proper position, leaving the fracture in the inner table?

A. Not necessarily.

Q. I say, that might occur. That is one of the things that may, and does occur?

A. The probability is that it does not occur but very seldom.

Q. Will you admit that it might occur?

A. It might occur; yes, sir.

Q. You don't antagonize the authorities on that subject?

A. Not on that point; no, sir.

Q. Now, another thing. Where you strike the outer table, whatever that force is, the force of that blow may be conveyed at once to the inner table and the brain, may it not?

A. It may; yes, sir.

Q. In the same way that you might strike a billiard ball with full head, hit another and remain in the place of the last one, the force of the ball is communicated to the second one, isn't it?

A. Yes, sir.

Q. And in the same way, a blow on the head may be communicated from the outer table to the inner one?

A. In exactly the same way? No—about the same way.

Q. And on that same principle it is that the blow upon the head with a sand bag or a piece of wrapped metal will be felt on the opposite side of the skull from which the blow is given?

A. Yes, sir; it depends upon somewhat the position of the
326 head the blow is received, though; especially true with the back part of the brain.

Q. Now, you have said with reference to these hypothetical questions, you have based your opinions largely on what you call the disordered digestion, don't you, Doctor?

A. Very largely; yes, sir.

Redirect examination of Dr. BALDWIN:

Q. If there has been an injury to the skull, such as has been spoken of, a blow such as Mr. Gore has called your attention to, would there have been indications that you could have seen when you visited the child first after the spasm? Symptoms or indications of any kind?

A. When I first saw the child I noticed that the wound inflicted upon the scalp was made by some sharp instrument; this sharp instrument instead of striking firmly against the skull, struck it at an angle, forcing itself upwards and tearing out an oblique piece of the scalp. If this child had been struck on the skull squarely with a sharp-pointed instrument it would, without a doubt have left a small point of irritation so that it would have been red upon the skin or the bone of the periosteum after I had bathed the wound, because I took and pressed my finger possibly a half an inch back of the lining of the scalp, went in all directions to see what I could in this irritation condition—I also examined carefully upon the wound itself—upon the skull itself and found no point of redness whatever; thereby judging that the pointed object had torn this skull, had not—had torn the scalp, had not touched the skull itself.

Q. Have you, at any time, been or observed this little child, and seen any indication of the skull injury whatever—the skull injury?

A. I have not, no, sir.

Q. How would such a skull injury, if it had some effect be likely to manifest itself, and about how soon?

327 A. In all probabilities there would have been some symptoms of brain injury within a very few days following. There are cases on record where the injury to the skull has had remote effects, for weeks or months afterwards; in a case of this kind where the spasms—where we have a case of spasms following some months after an injury of that kind, if that portion of the brain had been injured lying underneath the point of injury at this point here, without doubt there would have been a manifestation on that or the opposite side of the body at the time of the spasm; the spasm at that time showing more manifestation in one part of the body than the other. For instance, in this region of the body (indicating on the head) it is shown that the center from this region controls the muscles of the side of the face and the upper part of the neck; and if we had an irritation of that kind at that point, the injury at that—and inside of the skull, you would have had something else or a more severe spasm on the other side; and upon this side of the body more would show than on the other side, which would, in my mind, entirely eliminate the idea of injury to the brain in that case.

Q. Did you see any one-sided manifestation or any symptom of that kind?

A. I didn't see the child have the spasm at all.

Q. Afterwards?

A. Afterwards, no, sir.

Q. What is it about the inner table being more brittle than the

outer table; what is your memory as to that? I see Mr. Gore called your attention as to whether it is more brittle or is it—what is it as compared with the outer table—make yourself fully understood.

A. I think without doubt it is more brittle; the inner plate is more brittle than the outer, because the outer contains a larger amount of cartilage.

328 Recross-examination of Dr. BALDWIN:

Q. Do you say you examined carefully to see if there was any irritation at the time of this wound?

A. Yes, sir; to see if there was any irritation.

Q. Wasn't the child under chloroform at that time when you made your examination?

A. Yes, sir.

Q. How could you tell whether there was any irritation if the child was under chloroform or not?

A. By the discoloration at the point of contact.

Q. You could tell by discoloration whether there was any irritation or not?

A. Yes, sir; nearly all of these bones——

Q. (Interrupting.) I suppose you found no discoloration there to conclude absolutely there was no irritation?

A. I should conclude there was no irritation to the skull at that point.

Q. Would you conclude there was no injury to the inner table?

A. I would in conjunction with the examination of the scalp over that region; yes, sir.

Q. How would you ordinarily proceed to diagnose a case to determine whether the inner table was injured or not?

A. In the first place, you spoke a while ago of a blow from a sand bag or metal instrument; if an injury of that kind had taken place there would be more or less of the redness or congestion of the circulation within a few hours or so after an injury of that kind; and that would be, in the first place, evidence that there was—if it was not there, there was no injury beyond that point.

Q. A few hours after this accident you had the child under chloroform?

A. Yes, sir.

Q. How long did you have her under chloroform?

A. Oh, probably half or three-quarters of an hour, perhaps longer.

329 Q. That period, then, might pass by when she was under chloroform?

A. That period of redness, no.

Q. No, that period in which you say this congestion might manifest itself.

A. Might it pass by?

Q. Yes.

A. No, it would be coming on at that time.

Q. I thought you said in half an hour after the injury or in a half an hour or such a matter after the injury it ought to appear so that the parts were reddened, the same as if you should slap on the hand. Now, you told us of the discoloration you expect to find on the outer table, indicating the fracture of the inner table.

A. Slight redness.

Q. Wasn't it all red about there?

A. On the skull?

Q. Yes.

A. No, sir, it was not. It was perfectly white.

Q. It was perfectly white, was it?

A. Yes.

Q. So that the fact that you failed to find any redness there would not conclude the question of any fracture to the inner table?

A. Not taking that sym-tom alone, no, sir. I am not taking into consideration the scalp irritation at all.

Q. Isn't it well understood in the profession that many fractures of the inner table occur, and you cannot find them out until they manifest themselves afterwards?

A. I can only give that by a modified answer.

Question read by the reporter.

A. Yes, sir.

Q. You have stated in your direct examination that there are many cases where months are required to develop it, depending of course upon the character of the fracture, does it not?

A. It depends on the results of the fracture, the results to
330 the brain from the fracture, or from the blow. Not necessarily the fracture.

Q. Well, if a fracture is a splinter fracture, it will manifest itself sooner than if there is not?

A. There might be just a little fracture without any depression upon the brain whatever. In that case the fracture would not be the cause of the concussion of the brain that was beneath that portion of it that was fractured.

Q. What would it be due to?

A. An inflammation of the cuticle substance underneath that.

Q. Isn't it just what a fracture does—causes inflammation?

A. Not always, no, sir; we sometimes get hemorrhage; the great danger from a fracture is intercranial hemorrhage.

Q. What other dangers may develop from a fracture of the inner table?

A. Concussion.

Q. A hemorrhage and inflammation of those things?

A. Yes, sir.

Q. Wherever you find irritation, Doctor, you nearly always find inflammation, don't you?

A. Always.

Q. You cannot conceive of the one without the other?

A. No, sir.

Q. So that the direct result that we would obtain from irritation caused by the inner table, would be inflammation in the brain?

A. Not necessarily, no, sir.
Q. I thought you said you could not conceive——
A. (Interrupting.) It may be inflammation of the covering of the skull, the periosteum instead of the brain, it may be the dura mater or it may be the brain covering itself.
Q. Do you understand there could be inflammation of the covering without sympathetic action of the brain?
A. There may be, yes.
331 Q. It would have to be a mild fracture if it existed?
A. It may necessarily be a very mild fracture.

Rebuttal.

Mrs. McMichael, being recalled for further examination by Mr. Gore, testified as follows:

Before this injury on the 16th of December last, while I was living in the family of the Fyes, I had occasion to care for Ruth. I had occasion to bathe her. Sometimes it would be—well, whenever she was left with me I would wash her face and hands just the same as I did with my own children.
Q. Did she ever have, to your knowledge, before that time in December, this knot under her right eye?
A. Not that I ever saw. I noticed it right away after the dog bit her.
Q. Did you ever see it there before?
A. No, sir.

Recross-examination:

I would say it was not there before. I went to live in that house September 9th, 1897. I knew nothing about the child nor its surroundings prior to that time. I could not swear whether there was any affection of the eye there before that time; but I never see any.

Testimony closed.

Charge to the Jury.

Gentlemen of the Jury: The testimony in this case has been of considerable length. The instructions concerning the rules of law applicable to that testimony will be comparatively brief. Indeed, the greater portion of these instructions will consist of
332 requests which have been handed me by counsel for the respective parties. Some of these I shall modify to some extent and explain as I go along. As regards others, and as regards some general principles with which these requests deal, I shall have somewhat to say to you after giving the requests, but in neither case to any considerable length.
I first instruct you as requested in behalf of the plaintiff, as follows: This is an action under the statute of this State to recover

damages for injury inflicted upon the person of the plaintiff by a dog alleged to be owned and kept by the defendant.

You are instructed that if the defendant was the owner or keeper of the dog "Duke," that committed the assault upon the plaintiff, and you find that the assault was committed without the enclosure of the defendant, and without fault on the part of the plaintiff contributed thereto, your verdict should be for the plaintiff.

In this action the plaintiff, if she has shown herself entitled to recover, is entitled to recover all damages which she has suffered up to the time of the trial and for all damages which it is reasonably probable that she will sustain in the future, not exceeding in all the amount claimed in the declaration, and that is the sum of twenty-five thousand dollars.

In estimating the compensatory damages in cases of this character, all the consequences of the injury, future as well as past, are to be taken into consideration, including bodily pain, which is shown by the proof to be reasonably certain to have resulted from the injury.

The injured party, when entitled to recover, should be
333 awarded compensation for all injuries past and prospective. These are intended to include and embrace indemnity for loss of physical power or mental vigor; and for all injury to the nervous system of the plaintiff. The elements of damage which the jury are entitled to take into account consist of all effects of the injury complained of; consisting of personal inconvenience, the sickness which the plaintiff has endured; all bodily and mental suffering; impairment of the capacity of the plaintiff to make her way in the world and to earn money; the disfigurement or permanent annoyance which is liable to be caused by the deformity resulting from the injury. And in considering what would be a just sum in compensation for suffering or injury, the jury are not only at liberty to consider the bodily pain, but the mental suffering and fright may be treated as elements of the injury for which damages by way of compensation should be allowed. And as these last-mentioned elements of damage are, in their very nature, not susceptible of any precise or exact compensation, the determination of the amount is committed to the judgment and good sense of the jury. And if you find for the plaintiff, such sum should be awarded as will fairly and fully compensate her for all damages which she has sustained, consisting of the elements referred to, not exceeding the amount claimed in the declaration.

If the plaintiff is entitled to recover, and you find from the evidence that the assault upon the plaintiff has resulted in injury to the nervous system of the child, thereby causing the convulsions of April 14th and 16th last, the plaintiff will be entitled to recover for all damages she has sustained to her nervous system from such shock and fright, and for all physical and mental suffering she has endured from the time of the injury to the present time, and
334 for all suffering, both physical and mental which it is reasonably probable the plaintiff must sustain hereafter resulting from such injury.

And you are further instructed that you are to weigh with great care, and scrutinize closely the testimony of the experts for both sides on the subject of epileptic convulsions; and before you assess damages for such convulsions as may hereafter result to plaintiff, you should be fully satisfied from the evidence that these convulsions of the 14th and 16th of April were caused by the assault and its proven consequences. And you should be satisfied that such convulsions are of an epileptic character before awarding damages therefor. However, after carefully weighing all the evidence on this subject, if you are convinced that the convulsions were epileptic and it is reasonably probable that similar ones will follow hereafter, and you believe from the evidence the convulsions of the plaintiff to be incurable, you have a right to consider this fact as affecting the pursuits of the plaintiff in life, and its effects upon her power to earn money, or to attain to success in any employment open to women; and also the effect of such convulsions upon her bodily health and her powers of mind. And if you are satisfied that she has sustained injury of the character described, from this assault, you should, if you find for the plaintiff, award full and fair compensation for such injuries. You are not to assess damages against defendant by way of punishment. But if you find for the plaintiff, you are at liberty to award such an amount as will fully compensate the plaintiff for all damages she has already sustained or will sustain as explained in the foregoing requests, keeping constantly in mind the fact that compensation to plaintiff is the thing in view.

335 And if you find from the evidence that the dog is one of vicious and destructive propensities, and that previous to the commission of the assault charged, he had bitten other children, and if you also find that this vicious and destructive habit, and the fact that he had bitten other children was known to the defendant, you are at liberty to consider these facts in fixing your award of damages, not as a punishment to defendant, but in aggravation of the damages the plaintiff is entitled to recover.

I further instruct you, gentlemen, as requested in behalf of the defendant, as follows: The burden of proof is on the plaintiff as to any matter to be proved by her under her declaration in this suit, and if the evidence as to such matters is evenly balanced, such matters must be deemed not proven and the jury are not authorized to deem any such matter proven otherwise than by a fair preponderance of legal evidence. Any opinion of any medical expert witness, who has testified as a witness for the plaintiff in the case, where it is dependent upon a description by addition of untruth, or by omission of truth in any material matter, is of no avail to plaintiff to entitle her to recover in this action. That is true, gentlemen; and it would also be true as to the testimony of any medical witness who has been sworn in this case, upon the part of either the plaintiff or defendant. As I shall have occasion to say to you hereafter, in order to make the opinions of medical men of any value to you, they must be based upon such facts as you shall find to exist. And if you find that the opinion of any medical man, whether called for

the plaintiff or the defendant, is based upon a state of facts whi
does not exist, either because some facts have been untruthful
added, or some facts omitted, then the opinion would not a
336 you in arriving at the correct conclusions in this case. T
plaintiff cannot recover damages because of any fit or fits h
by plaintiff in April, 1898, without proving by a preponderance
legal evidence that such fits were caused by defendant's dog.

The plaintiff cannot recover damages for any fit or fits had
her in April, 1898, on proof that such fits might have been caus
by what defendant's dog did in December, 1897. That is tr
gentlemen, that you should not base your verdict on what mig
have been. It is upon what you find to be the fact concerning
that you should base your verdict upon; not upon speculation
possibilities, but on what you find to be fairly shown by a preponde
ance of the evidence upon that point.

The plaintiff cannot recover damages because of fit or fits had
her — April, 1898, on evidence which leaves it no more probable th
such fit or fits were caused by the defendant's dog, than that th
were caused otherwise,—which is merely another way of sayin
gentlemen, as I have said to you before, that every element in t
case which is asserted by the plaintiff must be shown by a prepo
derance of the evidence in the case.

The burden of proof is on the plaintiff to show that any fit or f
which she had in April, 1898, were epileptic fits, if she seeks to
cover damages for epilepsy. It is not sufficient to entitle the plai
tiff to recover for epilepsy, that the fits she had in April, 1898, mig
have been epileptic. I make the same observation in regard
that, that I did with the other. In order to entitle the plaintiff
a recovery of damages on account of epilepsy, the evidence mu
fairly preponderate in favor of the theory that the plaint
337 has suffered from epileptic seizures caused by the assault
the defendant's dog.

If the plaintiff seeks to recover for permanent injuries of a
kind she must prove such permanent injuries by a preponderan
of the evidence. And it is not sufficient to show a possibility
permanent injury. If the jury shall assess any damages again
defendant, they are hereby instructed not to double the same
reason of any statute of this State.

That is true, gentlemen; you are simply to estimate as you ha
already been told in very plain language, that which will be a fa
compensation to plaintiff for her injury, if you find that she is e
titled to recover. You are neither to double it, nor treble it, n
add to it any way. So much of the statute referred to in the decl
ration as regards the killing of any dog is inapplicable in this ca
That is also true, that with the question of killing the dog, y
have nothing to do in this case. It is not an element in the ca
one way or the other.

Now, gentlemen, a very few words by way of enlargement up
some of the matters which have already been stated to you in the
instructions, the instructions so far having been given upon the r
quest of either the plaintiff or the defendant, with perhaps bri

allusion to some matters which are not distinctly included in these instructions.

As you have already been fully instructed, the plaintiff claims that she is entitled to recover damages from the defendant under a statute which makes the owner or keeper of a dog liable for the biting of any person by such dog outside the enclosure of the owner or keeper of the dog. Now, in this case the plaintiff alleges
338 that the defendant's dog, being outside of defendant's enclosure, bit and lacerated plaintiff and that the plaintiff herself did not in any way contribute to this injury. As I have said to you, the burden of proof is upon the plaintiff to establish these facts, by a fair preponderance of the evidence in the case. So, that it will be your duty first to enquire and determine whether at about the time named in the declaration, namely, about the 16th day of December last, the defendant's dog, or a dog of which the defendant was the owner and keeper, made an assault upon the plaintiff outside the enclosure of the owner or keeper of the dog, and bit the plaintiff and lacerated her as she claims in the declaration that he did. And if you find that that is the case, and that this was without any contributory negligence or fault upon the part of the plaintiff, then the plaintiff, as I have already said to you, is entitled to your verdict. In speaking of the matter of contributory negligence the rule of law is that where a party claims damages in an action of this nature, he must show that he was not himself guilty of any negligence which contributed to the injury.

Now, the question whether the plaintiff was guilty of any contributory negligence will be a question, like every other question in this case, to be decided by you. It is only fair and proper, however, that the court should say to you, that in determining that question you are not only at liberty to, but should, take into account the age of the child, and whether a child of that age would take such precautions for its own safety as a mature person would. And the child is to be held to no greater responsibility, and is not obliged to use any more diligence in its precautions than children of ordinary prudence of that age would use. So that as I say, you have a right to take into account the age of the child in
339 determining whether the child did anything which contributed to the injury which she received from the dog. If you find that she did, that she brought the injury upon herself in any way, or in any way contributed to it, then she could not recover in this action. If you find that she did not, if you find that the care which she took of herself was all that could be reasonably expected of a child of that age, and was such care and prudence as a child of ordinary care and prudence at that age would manifest, that is all that would be required of the plaintiff, and she would not be deprived of a verdict on the ground of contributory negligence.

The greater part of the testimony, gentlemen, in this case, by far the greater part, has been directed to the measure of damages; that is, to aid you in determining the amount which the plaintiff is entitled to recover in case you should find a verdict for the plaintiff. It being the law, as has already been said to you, that witnesses are

not allowed to testify to any particular amount of damages; a
that can be done is to lay all the facts before a jury of intelligen
candid, conscientious men, and then submit to their honest, cand
and intelligent judgment as to how much a plaintiff ought to r
ceive as compensation under the circumstances disclosed.

The plaintiff claims that she suffered physical injury from th
dog. Injury that was permanent in its nature by disfigurement
that she also suffered from fright, and mental anguish at the tim
These, the court has already said to you, if you find to be the fac
that she did suffer from these causes, they would be proper elemen
of damages. (1.) The plaintiff goes further than this and claim
that there is not only a permanent injury by way of disfigurement
but it is claimed in her behalf that as a result of that assau
340 of the defendant's dog she had become subject to epilept
seizures, and that it is not only reasonably probable, bu
practically certain that she will henceforth suffer from the disea
of epilepsy, to her bodily discomfort and injury, and her mental
impairment.

Now, it will be for you to say under all the testimony, whethe
the plaintiff has sustained her allegations in this regard—her claim
in this regard. (2.) (If you find that she has, then that would be
proper subject, as I have already said to you, for you to take int
account in awarding her damages in this case.) If you find tha
she has not sustained this theory of her case by a fair preponde
ance of the evidence, then you should not consider that subject i
awarding damages. The burden of proof, as I have already said t
you, in this matter as in all others, rests upon the plaintiff to satisf
you, not beyond a reasonable doubt as in criminal cases, but by
fair preponderance of the evidence, of the truth of the claims tha
she makes.

((3.) Now, as bearing upon that question, a large number o
witnesses have been called upon both sides; medical gentlemen
who have given you their opinions concerning the nature of th
disorder from which it is claimed the plaintiff suffered about th
14th and 16th of April last; whether epileptic or not, and als
whether in their opinion these seizures, if such she had, wer
caused by the assault of the defendant's dog. Now, you are t
weigh this testimony just as you weigh other testimony i
the case, at what you consider it to be fairly worth. The cour
has addressed to you some words of caution on that subjec
already, and it is proper to say further that none of these wi
nesses, so far as the recollection of the court goes (and you
recollection must correct mine if I am in error) except D
341 Baldwin, claimed to testify from any observation of thei
own. They gave you upon the one side and the other thei
opinions. Now, these opinions are proper and competent whe
based upon facts); otherwise, as I have already indicated to yo
they are of no value. (So that it will be your duty in weighin
this opinion—evidence, to first ascertain whether it is based upo
the facts as you find them to be proven in this case, or whether
is not.) (If you find that it is, if you find that the facts assumed i

the hypothetical questions put to these medical witnesses are the facts that actually existed in this case, then you are to weigh the opinions of the physicians as to the result of those facts or the want of result, whichever it may be.) If you find, as I have said, as to any of the medical witnesses, whether called for the plaintiff or for the defendant, that a state of facts has been assumed which did not exist, and does not exist in the case, then, of course, the opinion would have no weight. ((4.) And so far as the opinions of medical men upon these subjects are concerned, as I have said to you, they are to be weighed by you just as you would weigh any other testimony. They are for you to consider; for you to weigh at just what you deem them to be fairly worth.) ((5.) And in weighing the evidence upon the one side or the other which has been given in the case, whether of witnesses who are not medical witnesses or of medical witnesses, you are to give to each piece of testimony just such weight as you think it fairly deserves. You are not only the sole judges of the facts in the case, but you are the sole judges of the weight of the evidence, come from whatever quarter it may. And as that evidence impresses your minds with the existence or non-existence of any fact, to that extent you are to yield to
342 its due force.) In weighing the testimony of any witness, it is proper that you should consider several things. You may consider the demeanor of the witness upon the stand, his candor or want of candor in giving his evidence; his knowledge or want of knowledge concerning those things about which he testified; you may consider any apparent interest or want of interest which he has in the case. In short, you are to bring to the weighing of the testimony of any witness your good judgment, your reason, your sound common sense. That is why you are in the jury-box, because you are men of intelligence, of judgment and of common sense; you are placed there to weigh the evidence and to weigh it at what you, in the exercise of these, your faculties, deem it to be worth.

After considering the case, gentlemen, if you determine that the plaintiff is entitled to your verdict, you will then award her such damages, as I have said, as will fairly compensate her for the injuries that she has received, and return into court and state that you find for the plaintiff, and that you assess her damages at the amount which you find she is entitled to recover.

If you find that she is not entitled to recover, it will be sufficient for you to say that you find for the defendant.

The crier may be sworn.

343 STATE OF MICHIGAN:

The Circuit Court for the County of Kalamazoo.

RUTH I. FYE, by Her Next Friend, HENRY W. FYE, Plaintiff,
vs.
CHARLES A. CHAPIN, Defendant.

Plaintiff's Requests.

1. This is an action under the statute of this State to recover damage for injury inflicted upon the person of the plaintiff by a dog alleged to be owned and kept by the defendant. You are instructed, that if the defendant was the owner or keeper of the dog "Duke," that committed the assault upon the plaintiff, and you find that the assault was committed without the enclosure of the defend-
344 ant, and without fault on the part of the plaintiff contributing thereto, your verdict should be for the plaintiff.

2. In this action, the plaintiff, if she has shown herself entitled to recover, is entitled to recover all damages which she has suffered up to the time of the trial, and for all damages which it is reasonably probable that she will sustain in the future, not exceeding, in all, the amount claimed in the declaration, and that is the sum of $25,000.00.

In estimating the compensatory damages in cases of this character, all the consequences of the injury, future as well as past, are to be taken into consideration, including the bodily pain which is shown by the proof to be reasonably certain to have resulted from the injury. The injured party when entitled to recover, should be awarded compensation for all injuries past and prospective. These are intended to include and embrace indemnity for loss of physical power or mental vigor; and for all injury to the nervous system of the plaintiff; the elements of damage which the jury are entitled to take into account consist of all effects of the injury complained of, consisting of personal inconvenience, the sickness which the plaintiff has endured, all bodily and mental suffering, impairment of the capacity of the plaintiff to make her way in the world and to earn money, the disfigurement or permanent annoyance which is liable to be caused by the deformity resulting from the injury; and in considering what would be a just sum in compensation for the sufferings or injury, the jury are not only at liberty to consider the bodily pain, but the mental suffering and fright may be treated as elements of the injury for which damages, by way of compensation, should be allowed.

And as these last-mentioned elements of damage are, in
345 their very nature, susceptible of any precise or exact compensation, the determination of the amount is committed to the judgment and good sense of the jury. And if you find for the plaintiff, such sum should be awarded as will fairly and fully compensate her for all damages which she has sustained, consisting of the elements referred to, not exceeding the amount claimed in the declaration.

(This request is taken verbatim from Sherwood *vs.* R'y Co., 82 Mich., 303, which case is fully approved; it was originally given by Justice Montgomery in Geveke *vs.* R'y, 57 Mich., 596.)

3. If the plaintiff is entitled to recover, and you find from the evidence that the assault upon the plaintiff has resulted in injury to the nervous system of the child, thereby causing the convulsions of April 14th and 16th last, the plaintiff will be entitled to recover for all damages she has sustained to her nervous system from such shock and fright, and for all physical and mental suffering she has endured from the time of the injury to the present time, and for all suffering, both physical and mental, which it is reasonably probable the plaintiff may sustain hereafter, resulting from such injury.

4. And you are further instructed to weigh with great care and scrutenize closely the testimony of the experts for both sides on the subject of epileptic convulsions; and before you assess damages for such convulsions as may hereafter result to the plaintiff, you should be fully satisfied from the evidence that these convulsions of the 14th and 16th of April were caused by the assault, and its proven consequences, and you should be satisfied that such convulsions are of an epileptic character, before awarding damages therefor;
346 however, after carefully weighing all the evidence on this subject, if you are convinced that the convulsions were epileptic and it is reasonably probable that similar ones will follow hereafter, and you believe from the evidence the affliction of the plaintiff to be incurable, you have a right to consider this fact as affecting the pursuits of the plaintiff in life, and its effects upon her power to earn money or attain success in any employment open to women; and also the effect of such convulsions upon her bodily health and her power of mind; and if you are satisfied that she has obtained injury of the character described from this assault, you should, if you find for the plaintiff, award full and fair compensation for such injury.

5. You are not to assess damages against the defendant by way of punishment, but if you find for the plaintiff, you are at liberty to award such an amount as will fully compensate the plaintiff for all damages she has sustained or will sustain, as explained in the foregoing requests, keeping constantly in mind the fact that compensation to the plaintiff is the end in view. And if you find from the evidence that the dog is one of vicious and destructive propensities, and that previous to the commission of the assault charged, he had bitten other children, and if you also find that the vicious and destructive habit, and the fact that he had bitten other children was known to the defendant, you are at liberty to consider these facts in fixing your amount of damages, not as a punishment to the defendant, but in aggravation of the damages the plaintiff is entitled to recover.

GORE & HORNER AND
FRANK E. KNAPPEN,
Attorneys for Plaintiff.

347 STATE OF MICHIGAN:

The Circuit Court for the County of Kalamazoo.

RUTH I. FYE, by Her Next Friend, HENRY W. FYE, Plaintiff,
vs.
CHARLES A. CHAPIN, Defendant.

Now comes the said defendant, by N. H. Stewart and Edward Bacon, his attorneys, and requests the court now here to charge the jury as follows:

N. H. STEWART,
EDWARD BACON,
Attorneys for Defendant.

348 1st. The plaintiff cannot recover.

2nd. The evidence, without conflict, shows that when the plaintiff received her scalp wound she was about four years and four months of age, living with her parents in their dwelling-house; that the defendant's dog was then in said house; that the plaintiff's parents well knew said dog, and if it was ferocious, knew of its ferocity; that they made no effort to expel the dog from the house, although the child expressed fear that the dog would bite her; that after giving the child beer, of which one or both of said parents partook, and while they, the said parents, had entire control of the dog, and of their child, the plaintiff, they had her and the dog in a room together, no other person being in said room, and then and there the plaintiff received her scalp wound; that the legal effect of these facts, as proven in this case, is such that the plaintiff cannot recover.

3rd. The evidence, without conflict, shows that when the plaintiff received her scalp wound her parents, then and there, had the dog and the plaintiff, their child, completely in their control, in their house and in the same room with the dog, where no person other than the plaintiff was, and that said parents had such knowledge of the nature of the dog, that they were guilty of such gross negligence, directly contributing to the injury which the child received, that the plaintiff cannot recover.

4th. There is no evidence tending to prove that the defendant's dog caused any direct injury to the plaintiff's brain, by means of any injury to any part of her skull.

5th. There is no evidence tending to show that the
349 defendant's dog caused any indirect permanent injury to the plaintiff's brain or nervous system, by means of any part of the process of the healing of the scalp wound on the plaintiff's head.

6th. There is undisputed evidence tending to show that prior to December 14th, 1897, the plaintiff had a basic cause for such a fit as she had in April, 1898, and the defendant is not liable in this action for any damages resulting from such basic cause by itself.

8th. The testimony of Dr. Z. Baldwin, tending to show that the exciting cause of the fit had by the plaintiff on the 14th day of

April, 1898, was indigestion and consequent fermentation, is uncontradicted and shows an existing and present exciting cause, sufficient to produce said fit.

9th. The jury are not authorized by conjecture from any evidence in this case to select some exciting cause other than that caused by indigestion, and thereby charge the defendant for said fit.

10th. The evidence shows, without conflict that all the physicians who testified as witnesses for the plaintiff had never seen the plaintiff until within ten days last past, and their opinions on the question whether or not the plaintiff's fit or spasm of April 14th, 1898, was an epileptic fit or spasm, are dependent on descriptions of said fit or spasm; matters which preceded it and which followed it, and these descriptions set forth in the evidence are defective and fail to be true and fair according to undisputed testimony.

11th. As to the important matter of the plaintiff's symptoms and of indigestion proved by uncontradicted testimony of Dr. Z. Baldwin, there are fatal defects in the description of the plaintiff's spasm of April 14th, 1898, on which each of the plaintiff's medical
350 witnesses have testified to his opinion, that such spasm was probably caused by the defendant's dog.

13th. No description of the plaintiff's fit of April 14th, 1898, and of that which preceded, and of that which succeeded said fit, which was legally made the basis of opinion by any of the plaintiff's medical witnesses, is sufficient on the important matter of the plaintiff's symptoms of indigestion existing on April 14th, proved by Dr. Baldwin's uncontradicted testimony.

14th. There is no testimony or evidence in the case authorizing any medical witnesses who has testified for the plaintiff to pass over both symptoms of indigestion and its effects proved by Dr. Z. Baldwin, and also the measles had by the plaintiff in March and April, 1898, and further to declare an opinion as an expert that the defendant's dog caused the fit of April 14th, 1898.

15th. If the jury find that on the 14th day of April, 1898, the plaintiff was suffering from indigestion, accompanied by fever and a temperature of at least 101 degrees, and that such indigestion was sufficient to cause the plaintiff's fit on said day, then under the evidence in this case, the jury are instructed that they cannot find that said fit was caused by defendant's dog.

16th. If the jury find that on the 14th day of April, 1898, the plaintiff was suffering from an attack of indigestion in a manner sufficient to have been the only exciting cause of the plaintiff's fit of said day, then the jury are not at liberty to disregard the undisputed fact that in March, 1898, the plaintiff's measles described by her witnesses failed as an exciting cause to produce any fit prior to said attack of indigestion, and by conjecture held the defendant responsible for the fit of April 14th.

351 17th. There is no legal evidence tending to prove that any fit or fits had by the plaintiff in April, 1888, were caused by any injuries or fright, or by both injuries and fright caused by the defendant's dog.

21st. There is no legal evidence tending to prove that it is more probable that any fit or fits had by the plaintiff in April, 1898, were caused by the defendant's dog than that they were caused otherwise.

22nd. The plaintiff cannot recover damages in this suit because of epilepsy.

23rd. The plaintiff's declaration is not sufficient in law to entitle her to recover in this action damages by reason of epilepsy.

24th. The evidence shows without conflict that epilepsy is not an ordinary and general result of injuries, or injuries and fright, such as the plaintiff received in December, 1897, from the defendant's dog.

25th. If the plaintiff suffered injuries from epilepsy, not the ordinary and general result of injuries, such as she received in December, 1897, from the defendant's dog, and from the fright accompanying such injuries, then the damages to be recovered for such epilepsy would be special damages, and cannot be recovered under the plaintiff's declaration in this case.

26th. The plaintiff's declaration in this suit has no allegation entitling the plaintiff to recover special damages by reason of epileptic fits.

29th. There is no legal evidence on which the jury can find, legally, that any fit the plaintiff had in April, 1898, was epileptic.

31st. The plaintiff cannot recover for permanent injuries by proof of any fit less likely to result in permanent injury than so to result.

352 32nd. There is no legal evidence on which the jury may properly find that it is more probable that the plaintiff will suffer permanent injuries from any fit or fits which she had in April, 1898, than that she will not suffer such permanent injuries.

33rd. The evidence, without conflict, shows that there might be in the plaintiff, prior to December 14th, A. D. 1897, a basic cause from which, by means of some exciting cause, there might result such a fit as the plaintiff had in April, 1898, and that what the defendant's dog did on December 14th, 1897, with the plaintiff's subsequent attack of measles in March, 1898, failed as an exciting cause or as cause of any kind to produce any fit prior to April 14th, 1898, and that on said day the plaintiff was suffering from an attack of indigestion, sufficient at least as an exciting cause to produce the plaintiff's fit on said day, and there is no legal evidence in the case sufficient to authorize the jury to find that the defendant's dog was the exciting cause or any other kind of cause of said fit.

36th. There is no testimony of any witness or witnesses on the part of the plaintiff which contradicts the testimony of Dr. Z. Baldwin, to the effect that when he arrived at the house of the plaintiff's parents on the 14th day of April, 1898, he found her suffering from an attack of indigestion.

37th. There is no testimony of any witness or witnesses on the part of the plaintiff which contradicts the testimony of Dr. Z. Baldwin, to the effect that when he arrived at the house of the plaintiff's parents on the 14th day of April, 1898, he found her suffering from

an attack of indigestion sufficient to produce the plaintiff's fit which she had on said day.

353 38th. Each count in the plaintiff's declaration states a cause of action under the statute therein mentioned, known as the Michigan dog law, and said statute must be strictly construed, because it is in derrogation of the common law and is penal in its nature.

39th. Under the statute mentioned in the declaration, gross and reckless negligence of the defendant's hired girl, in disobedience of his orders and during his absence from this State, cannot be imputed to him.

40th. The defendant cannot, in this action, be held accountable for injuries to the plaintiff caused by the gross and reckless wrongdoing of his hired girls jointly, with the gross and reckless negligence of the plaintiff's parents, the injuries being caused by the defendant's dog being in a room in the house of the plaintiff's parents where no person other than the plaintiff was; the dog being in same room by means of such girls and reckless negligence of the plaintiff's parents then present.

41st. The plaintiff's counsel have presented to medical witnesses for the plaintiff, or to at least one medical witness for the plaintiff, an hypothetical question of considerable length, ending with words substantially as follows: "I ask you under that state of facts, what, in your opinion, would be most likely in the symptoms, and in the causes named in this statement to induce the epileptiform convulsions of the 14th?" The jury are hereby instructed to disregard and consider as stricken out all answer of any witness or witnesses for the plaintiff to said question.

42nd. The question mentioned in the foregoing request, No. 41, illegally assumes that the alleged convulsions were epilepti-
354 cal when this was an important matter directly in controversy; and further illegally assumes that some of the symptoms and causes mentioned in said question did cause said convulsions. The said question illegally excludes as a cause the attack of indigestion proved without contradiction to be existing in the plaintiff on the 14th day of April, 1898.

43d. No answer of any medical expert sworn for the plaintiff as a witness, such answer being to said hypothetical question, can be of any avail to the plaintiff in the suit to enable her to recover.

N. H. STEWART,
EDWARD BACON,
Attorneys for Defendant.

At a general term of the circuit court for the county of Kalamazoo, continued and held at the court-house, in the city of Kalamazoo, in said county, on Friday, the 3rd day of June, A. D. 1898.

Present: Hon. George M. Buck, circuit judge.

Court opened for business in due form.

RUTH I. FYE, by Next Friend,
vs.
CHARLES A. CHAPIN.

The jury heretofore impanneled and sworn in this cause, after being out all night, return into court and say upon their oath, that the said defendant is guilty in manner and form as the said plaintiff hath in her declaration in this cause complained against
355 him; and they assess the damages of the said plaintiff on occasion of the premises over and above her costs and charges by her about her suit in this behalf expended, at the sum of ten thousand (10,000) dollars.

There-pon the court adjourned until Saturday, June 11, at nine o'clock a. m.

Read, approved and signed.

GEORGE M. BUCK,
Circuit Judge.

Attest: W. A. FORBES, *Clerk.*

At a general term of the circuit court for the county of Kalamazoo, continued and held at the court-house, in the city of Kalamazoo, in said county, on Friday, the 3rd day of June, A. D. 1898.

Present: Hon. George M. Buck, circuit judge.

Court opened for business in due form.

RUTH I. FYE, by Next Friend,
vs.
CHARLES A. CHAPIN.

In this cause, on motion of attorneys for the said defendant, it is ordered by the court now here, that fifteen days may be allowed in which to move for a new trial.

Thereupon the court adjourned until Saturday, June 11th, at nine o'clock a. m.

Read, approved and signed.

GEORGE M. BUCK,
Circuit Judge.

Attest: W. A. FORBES, *Clerk.*

356 STATE OF MICHIGAN:

The Circuit Court for the County of Kalamazoo.

RUTH I. FYE, by Her Next Friend, HENRY W. FYE, Plaintiff,
vs.
CHARLES A. CHAPIN, Defendant.

STATE OF MICHIGAN, } *ss:*
County of Berrien, }

Leander J. Morgan, of the city of Niles, in said county, being duly sworn says: That for more than one year last past, he has been city clerk of said city, and has known the above-named Henry W. Fye;

that the records of said city show that said Henry W. Fye
357 has been receiving from the director of the poor of said city, commonly known as the poormaster, and from the public money of said city, aid as follows:

From June 3, to October 9, 1897	$7 00
From October 11, to December 30, 1897	30 10
From December 30, 1897, to May 31, 1898	62 50

LEANDER J. MORGAN.

Subscribed and sworn to before me this 9th day of June, A. D. 1898.

BELLE CROSS,
[SEAL.] *Notary Public, Berrien County, Mich.*

On the back of the above and foregoing affidavit is the following indorsement: Filed June 11th, 1898. Wm. A. Forbes, county clerk.

358 STATE OF MICHIGAN:

The Circuit Court for the County of Kalamazoo.

RUTH I. FYE, by Her Next Friend, HENRY W. FYE, Plaintiff,
vs.
CHARLES A. CHAPIN, Defendant.

Now comes the said defendant, Charles A. Chapin, by N. H. Stewart and Edward Bacon, his attorneys, and protests that the verdict rendered in this cause, and any judgment thereon, must be unjust and erroneous, and ought to be set aside; and he doth aver that it does not appear by the evidence in this suit, that he is justly liable for the damages complained of, under the provisions of any statute of this State or otherwise, in the plaintiff's declara-
359 tion in this suit; and he respectfully insists that no amount of damages in this suit ought to be doubled, and he objects and protests against any doubling of any damages in this suit, and alleges that he is not justly liable for any damages and is not justly liable for the damages complained of in the plaintiff's declaration.

N. H. STEWART,
EDWARD BACON,
Attorneys for Defendant.

On the back of the above protest is the following indorsement: Filed June 11th, 1898. Wm. A. Forbes, county clerk.

360 STATE OF MICHIGAN:

The Circuit Court for the County of Kalamazoo.

RUTH I. FYE, by Her Next Friend, HENRY W. FYE, Plaintiff,
vs.
CHARLES A. CHAPIN, Defendant.

KALAMAZOO COUNTY, *ss:*

Walter Parker, of the township of Richland, in said county and State, being duly sworn, deposes and says that he is 52 years of age, and was a juror in attendance upon said court at the May term thereof, and sat as a juror in said cause.

And this deponent further says, that he has been advised, and believes, that the plaintiff in said cause has asked the court
361 to double the verdict rendered in said cause by this deponent and his eleven associate jurors who sat in said case, from ten thousand dollars to twenty thousand dollars.

And this deponent further says, that the question of the court doubling the verdict that said jury might find, if any, for said plaintiff in said cause, was considered by this deponent and his associates, and discussed by them in their deliberations as such jurors, and this deponent positively states, that he and his associates understood the court to mean, in his charge to them, that in case they did not find a sum large enough, then, and in that case, the court could, if he so desired, double their verdict, and relying upon that understanding, this deponent, and his associates concluded to put the verdict $10,000, so that the court would not double it; and this deponent positively states that, had he have known or believed that the court would feel obliged to double their verdict, this deponent would not have voted for nor agreed to any verdict above $5,000.00; and this deponent believes that few, if any, of his associates would have voted or returned a larger sum than $5,000.00 had they have thought or known it would be doubled; and he avers that in case said verdict is doubled, this deponent was led into an erroneous understanding and belief as to what might be done with the verdict by the court, as *was* most, if not all, of his associates sitting as jurors in said cause.

And this deponent says, that he gladly makes this affidavit that an injustice may not be done, for, as he believes, the jury went to said limit with the full belief that their verdict would not be disturbed, and further deponent says not.

WALTER PARKER.

362 Subscribed and sworn to before me, this 4th day of June, A. D. 1898.

SARAH A. QUIGLEY,
Notary Public in and for Kalamazoo Co., Mich.

The foregoing affidavit of the juror, Walter Parker, sitting on the trial of said cause, together with nine other affidavits of said jury,

making ten of the jury in all, exactly the same as said Parker's affidavit, except as to age of the juror, place of residence and time of verification, were filed in support of said protest against the doubling of said verdict on said 11th day of June, 1898, and used on the part of the defendant in support of said protest, on the argument upon the plaintiff's motion to double the verdict returned by the jury in said cause, as well as upon defendant's motion for a new trial in said cause.

363 STATE OF MICHIGAN:

The Circuit Court for the County of Kalamazoo.

RUTH I. FYE, by Her Next Friend, HENRY W. FYE, Plaintiff,
vs.
CHARLES A. CHAPIN, Defendant.

In the matter of motion to enter judgment.

KALAMAZOO, MICHIGAN, *June 11th*, 1898.

Opinion of Judge Buck.

I do not think that any of the questions here involved would lead to any conclusion differing from the impression I had at the close of the argument. If I was to take the matter under advisement it would impose upon me the labor of filing a written
364 opinion; so I prefer to announce my views now so *it* will be taken down by the stenographer, and counsel will have the benefit of them if they desire to review the judgment of the court upon this matter in the supreme court.

When it was first suggested in regard to the matter of doubling the amount of damages found by the verdict of the jury, the court expressed an opinion as a matter of first impression that the statute was mandatory, and that was based upon the first part of the statute, which says, "that such owner or keeper shall be liable for the value of such property or person injured, and double the amount of damages sustained to be recovered in an action of trespass."

As I said, the court had only hastily read the statute, and that was a matter of first impression. My attention is now called by counsel for the defendant to a later clause in the statute which very decidedly modifies the former one: "If it shall appear to the satisfaction of the court by the evidence that the defendant is justly liable for the damages complained of, under the provisions of this act, the court shall render judgment against such defendant in double the amount of damages recovered." I think, as contended by defendant's counsel, the words should be taken as they actually imply as provided by statute, and that it would therefore be left to the discretion of the judge of the court, whether a justice of the peace or a circuit judge, to determine whether, in view of the evidence, the damages as awarded by the jury in their verdict should be doubled. At any rate, I shall so treat it for the purposes of this motion.

Now, these are some matters that ought to be considered and disposed of before we reach the main question. It is urged that
365 the case is not properly here, for the reason that the circuit judge was disqualified to hear the case; that he appointed the next friend of the infant; that he did so without requiring any bond to be filed, and his action in appointing the next friend was wholly void, and therefore there is no case here. I cannot say that this raises a question free from doubt; but I shall consider that as a matter of first impression.

Our own supreme court discuss this question in a case which went up from this circuit, and it went to a considerable length in that direction; and in another case, in the 20th of Michigan, I think, they went to considerable lengths in that direction, and I think rightly. My own view is that it is a matter which requires the exercise of the judge's own discretion and judgment where he is not qualified to hear the case.

Now, so far as requiring the bond is concerned, that is not a matter of which the defendant in this case could complain. That is a matter between the infant and the next friend; and the fact that no bond was required does not seem to me to oust this court of jurisdiction, nor in any way effect the right of the next friend to bring the action.

There is a case which was decided by the Supreme Court, and which I am not able at this moment to recall, either the names of the parties or the volume of the reports in which it is found, which, if I remember aright, went up from the county of Allegan, in which the judge of probate was disqualified to appoint an administrator. A petition for the appointment of an administrator was filed in his court, and he having discretion as to time of hearing, and the notice given, acted upon both these matters. It was urged that the appointment was void. The Supreme Court held otherwise. It held that while he was disqualified he could set
366 the machinery of his court in motion. Now, it seems to me that this case must come under that rule. That while Judge Coolidge might be legally disqualified from hearing the case, he could set the machinery of the court in motion to the extent of naming some one, in this case, the proper person to be named, namely, the father of the child, to bring the action, and that therefore the argument against such jurisdiction is not well taken.

Now, it is urged that the damages in this case ought not to be doubled, because the jury assessed damages with reference to that question upon the supposition that the court could not do it. And they allege in their affidavit that they were misled into the believing that if they awarded a sufficient amount of damages the court could not double it; and taking that matter into consideration, they awarded ten thousand dollars, when if they had supposed the court could double it, they would have awarded only five thousand.

I think the instructions of the court to the jury would be searched in vain for any language from which they could come to that conclusion. At the request of defendant's counsel, the court instructed the jury that they should not double the damages. The court

could not see how that was a request that ought to have been given; but as something had been said in the argument to the jury on the part of defendant's counsel about the doubling of damages, the court, out of abundance of caution, lest some of the jurors might get the impression that they had a right to double the damages, gave this request. The court went further and said to the jury that they must not double the damages, nor were they to add to them in any way. They were told over and over again in the instructions, that they must award just such damages as
367 would fairly compensate the plaintiff for the injuries sustained. I do not see how the language could have been plainer.

Now, the fact that the jury took into consideration the matter of the doubling of the damages, if they did so, was something so utterly beyond their right and province to consider, that the court could pay no attention to that claim. They had no more right to consider the question whether the court could double the damages, in view of the plain instruction that was given them, than they had a right to consider what would become of the money that they should award the plaintiff in case they found a verdict in her favor. So that that cannot be considered for one instant. The court must presume, notwithstanding the affidavits, that the jury awarded such sum as damages as they thought would fairly compensate the plaintiff for the injury she sustained. It must presume that, for the purpose of this motion. How much might be urged on a motion for a new trial on that behalf, would be altogether another matter.

Now, assuming that it is a matter for the discretion of the court, that discretion, and the reasons for it, must have been apparent to the legislature, which in an early day saw fit to pass an act with regard to dogs, for the protection of sheep and other domestic animals. The act is somewhat crude, as is well urged by counsel for the defendant. The only thing the court can do is to construe the statute as it stands. Whatever the members of the legislature may have had in their minds, the court must take their language.

Now this statute did not, perhaps, discriminate against dogs; no legislation ought to do that. A dog, in some cases, may be a very valuable and desirable species of property. I think most
368 people like a good dog. And certainly I think that in the case of most people that do not like a good dog, they ought to do so. A dog is a companion of a man. It has some relations to a man that no other domestic animal has. And the statute in this regard is not singular. We have an act of the legislature that in case of trespass for the destruction of timber, that the jury, if it should find that it is wilful, then the damages can be trebled. The jury are, in the first place, to assess the damages of the plaintiff at a sum that will properly compensate the plaintiff for the injury on account of the removal of the timber, and then, if the injury was wilful, the court must treble it. The additional damages being given to take the place of what was then given under the rules of law, in cases of trespass as smart money, *primitive* damages,—damages to punish defendant for the wrong. They have properly

done away with that. But some relics of it have remained in our laws, and one of these is the timber case I speak of, where the law gives the plaintiff three times the amount as compensation that he would be entitled to receive for the injury sustained on account, perhaps, of his loss of timber, or as smart money, or to punish the defendant. In some cases it has been very unjustly enforced, as to the defendant. I know of one case in this court that seemed to operate an injustice to the defendant on account of the provisions of that law; the jury found the trespass wilful, and the case went to the Supreme Court, but the Supreme Court was as powerless as this court to make any change in the law to help out a case where real injustice was done by its enforcement.

Now, coming right to this law. Every one recognizes the fact that there are dogs that are not gentle, or kindly in their
369 dispositions. There are dogs that are vicious, and dogs that destroy property,—sheep and other domestic animals. Under the present statute the owner or keeper of a vicious dog is made liable in a proper case for double the amount of damages found by the jury; and there is another provision that requires the owner or keeper to kill the dog, on notice to do so; the legislature thinking, whether wisely or unwisely, that the life of a dog is not of any great consequence as compared with the safety of other domestic animals, or the security of individuals.

Now, I am very frank to say, that in this case it had appeared that the defendant was the owner and keeper of a dog which had never shown any vicious propensities, that this was its first outbreak, while the court would be powerless to help the defendant so far as the damages assessed are concerned, the statute, making him liable for those; still, if he was shown to have had no knowledge of the vicious propensities of the dog, yet it would be unjust to him to double the damages. The testimony in this case shows that this dog had been accustomed to bite mankind; and that being the case, it seems to me it presents a different case from what it would under a different state of affairs, and it became the duty of defendant to see that the dog was shut up, without any peradventure, so that he would get out. The jury, in question, shows that the dog did get out, and whether it was with or without the fault of the defendant, after he had notice of the vicious propensities of the dog as shown in this case, he must be held to a very strict account for what the dog does.

There are cases where a dog bites some one within the enclosure of the defendant, as in the case of Kennett *vs.* Engle, where
370 it was argued that the dog was simply guarding the premises according to his intelligence, and he was doing just what he ought to do. Nevertheless, in that case the jury awarded damages against the defendant.

It seems to me, therefore, that the defendant must be held to be responsible for all the damages that the statute allows, and I can conceive of no case wherein it would be proper to double the damages under the statute, unless it would be proper in such a case as this.

I think, therefore, that the judgment should be entered upon the verdict under the statute for double the amount of damages found by the jury.

Mr. BACON: We take an exception to it, your honor.

At a general term of the circuit court for the county of Kalamazoo, continued and held at the court-house, in the city of Kalamazoo, in said county, on Saturday, the 11th day of June, A. D. 1898.

Present: Hon. George M. Buck, circuit judge.

Court opened for business in due form.

RUTH I. FYE, by Next Friend,
vs.
CHARLES A. CHAPIN.

The jury by whom the issue joined in this cause was tried, having rendered a verdict therein in favor of the plaintiff and against the defendant, and having assessed the damages of the said plaintiff on occasion of the premises at the sum of ten thousand (10,000) dollars over and above her costs and charges by her about
371 her suit in this behalf expended, in the sum of five (5) dollars, and the attorneys for the plaintiff having heretofore moved the court to double the amount of said damages so found by the jury, in accordance with the statutes in such cases made and provided; and said motion having been brought on to a hearing, and the court having heard the arguments of counsel for and against said motion,

Therefore it is ordered and adjudged by the court now here, that said plaintiff do recover the sum of twenty (20,000) thousand dollars against the said defendant, Charles A. Chapin, together with her costs and charges, to be taxed as aforesaid, and that the plaintiff have execution therefor.

Thereupon the court adjourned until Monday, June 13, at nine o'clock a. m.

Read, approved and signed.

GEORGE M. BUCK,
Circuit Judge.

Attest: W. A. FORBES, *Clerk.*

At a general term of the circuit court for the county of Kalamazoo, continued and held at the court-house, in the city of Kalamazoo, in said county, on Monday, the 20th day of June, A. D. 1898.

Present: Hon. George M. Buck, circuit judge.

Court opened for business in due form.

RUTH I. FYE, by Next Friend,
vs.
CHARLES A. CHAPIN.

372 Court opened for business in due form.

RUTH I. FYE, by Next Friend,
vs.
CHARLES A. CHAPIN.

In this cause, on motion of attorneys for the said defendant, it is ordered by the court now here, that six (6) days additional time may be allowed in which to move for a new trial, and in event said motion should be denied, the defendant may have sixty days after the entry of such order denying the motion, to prepare and file a bill of exceptions.

Thereupon the court adjourned until Friday, June 24th, at nine o'clock a. m.

Read, approved and signed.

GEO. M. BUCK,
Circuit Judge.

Attest: W. A. FORBES, *Clerk.*

373 STATE OF MICHIGAN:

The Circuit Court for the County of Kalamazoo.

RUTH I. FYE, by Her Next Friend, HENRY W. FYE, Plaintiff,
vs.
CHARLES A. CHAPIN, Defendant.

KALAMAZOO COUNTY, *ss:*

Frank L. Luce, of the township of Texas, in said county and State, being duly sworn, deposes and says, that while sitting as a juror upon the trial of said cause, he heard it talked by people in and about the court-house, as did others of the jury sitting with him in said cause, that the income of said defendant was $4,000.00 a day. And this deponent avers that he was advised, and believes that one of the officers of the court had made such a state-
374 ment to or in the presence of some one or more of the jurymen sitting with this deponent upon the trial of said cause, and deponent avers that it was the general opinion among said jurymen that said defendant was a man of great wealth, and that the plaintiff, as he understood it, was very poor.

FRANK L. LUCE.

Subscribed and sworn to before me this 22nd day of June, A. D. 1898.

SARAH A. QUIGLEY,
Notary Public in and for Kalamazoo Co., Mich.

On the back of this affidavit is the following indorsement, to wit: "Filed June 23rd, 1898. Wm. A. Forbes, county clerk."

375 STATE OF MICHIGAN:

The Circuit Court for the County of Kalamazoo.

RUTH I. FYE, by Her Next Friend, HENRY W. FYE, Plaintiff,
vs.
CHARLES A. CHAPIN, Defendant.

Motion on Behalf of Defendant for New Trial.

Now comes the said defendant, by N. H. Stewart and Edward Bacon, his attorneys, and moves the court now here for an order to set aside the verdict of the jury and any judgment thereon
376 rendered, and grant a new trial because of the reasons following, amongst others.

N. H. STEWART,
EDWARD BACON,
Defendant's Attorneys.

1. The court erred in refusing to direct a verdict in favor of the defendant.

2. The court erred severally in refusing the written requests presented on behalf of the defendant and numbered respectively 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 13, 14, 15, 16, 17, 21, 22, 23, 24, 25, 26, 29, 31, 32, 33, 36, 37, 38, 39, 40, 41, 42, 43.

3. The court erred respectively in granting the written requests presented on behalf of plaintiff and numbered respectively 1 and 2, and the court erred severally in giving, as modified by the court, the written requests presented on behalf of the plaintiff and numbered respectively 3, 4, 5.

4. The court erred in charging the jury on his own motion severally, as follows:

a. In so much as commences with the words, "In estimating compensatory damages," and closes with the words, "past and prospective."

b. In so much as commences with the words, "These are intended to include," and closes with the words, "or mental vigor."

c. And in so much of said charge as authorizes the jury to award damages for all injury to the nervous system of the plaintiff.

d. And in so much of said charge as authorizes the jury to find that the assault by the defendant's dog resulted in injury to the nervous system of the plaintiff, thereby causing the convulsions of April 14th and 16th.

377 *e.* And in so much of said charge as authorizes the jury to find from the evidence that the plaintiff had two epileptic fits in April, 1898.

f. And in so much of said charge as authorizes the jury to find that it is reasonably probable that the plaintiff will suffer from incurable epilepsy, and charge the defendant therefor and assess against him the damages for all the results thereof.

g. And in so much of said charge as is as follows: "If you find for the plaintiff, you are at liberty to award such an amount as will

fully compensate the plaintiff for all damages she has already sustained or will sustain, as explained in the foregoing request."

h. And in so much of said charge as authorized the jury to consider the vices of the defendant's dog, "in aggravation of the damages, and plaintiff is entitled to recover."

5. The court erred in so much of his charge on his own motion as authorized the jury to find from alleged evidence in this case, that the plaintiff had in April, 1898, two fits which were epileptic.

6. The court erred in so much of his charge on his own motion as authorized the jury to find that any fit or fits had by the plaintiff in April, 1898, were caused by what the defendant's dog did in December, 1897.

7. The court erred in so much of his charge on his own motion as authorized the jury to treat as legal evidence before them, all answers to hypothetical questions administered on behalf of the plaintiff to expert witnesses called on her behalf.

8. The court also erred in authorizing the jury to find that if the plaintiff, prior to any assault on her by the defendant's dog
378 had existing in her any cause, predisposing her to have epileptic fits, such cause being what is known in medical science as a basic cause, and if the assault by the defendant's dog was no more than an exciting cause, then the jury might under the evidence in this suit, award against the defendant the entire damage to the plaintiff by reason of epilepsy.

And for the granting of his aforesaid motion, the defendant alleges further reasons, following:

1. The verdict is excessive.

2. The judgment entered is excessive and unwarranted.

3. The evidence is insufficient to justify the verdict.

4. Both verdict and judgment are contrary to law and manifestly unjust and oppressive.

5. The jury in their deliberations were misled and misunderstood the instructions of the court, as to what might be done with their verdict, and had they have known that their verdict would be doubled they would not have found to exceed $5,000.00.

6. At least ten of the jurors rendered their verdict for ten thousand dollars, believing that the same would not be doubled by the court.

7. At least ten of the jurors joined in the verdict for ten thousand dollars, because, according to their ideas and understanding of the judge's charge in open court, if they rendered a judgment for as great a sum as ten thousand dollars, the same would not be doubled.

8. H. S., sec. 2119, does not authorize the court to double any damage, the amount of which is not proved, but is fixed by
379 a jury in the exercise of discretionary power, as the verdict was rendered in this case, under charge of the court.

9. There is no testimony or evidence in this case to prove any particular amount of damages, or any such amount as to authorize the court to enter judgment rendered in this case.

10. Howell's Statutes, section 2119, mentioned in the plaintiff's declaration, gives three substantially different descriptions of dam

ages; damages sustained, the damages complained of and the damages proved, but does not include damages to be awarded because of hydrophobia, and the plaintiff's declaration does not include such damages.

11. The verdict is general on both counts in the declaration; the second count complains of damages, as follows: "Her mental faculties ruined, and her blood poisoned and contaminated." There is no evidence tending to show that the defendant is justly liable for such damages; therefore the verdict should be set aside, meaning to claim for damages to be awarded because of hydrophobia.

12. The court erred by doubling the amount of damages assessed by the jury, because there is no legal evidence in the case from which it can appear to the reasonable satisfaction of the court that the defendant is justly liable for the damages complained of in the declaration, especially for so much as is complained of by the words, "Her mental faculties ruined, and her blood poisoned and contaminated," which the plaintiff's counsel on the trial of this cause did in open court declare, to conclude a claim for damages to be awarded because of hydrophobia.

380 13. The court erred in doubling the amount of damages assessed by the jury, because the plaintiff had complained of damages under the provision of the act mentioned in the declaration, for which the defendant was not justly liable, to wit, that her mental faculties were, at the commencement of this suit, ruined.

14. The files show, and it stands conceded, that Henry W. Fye never gave any bond as next friend, and that he is without any financial responsibility.

15. The evidence shows without conflict, and it stands conceded, that the Honorable Orville W. Coolidge, judge of the second judicial circuit, was, by reason of relationship by affinity, totally incompetent to make any order requiring the exercise of any discretion, and that the attorneys on behalf of plaintiff obtained from said judge an order for the appointment of next friend, filed in this suit, without any requirement for any bond whatsoever; and the evidence further shows without conflict, that Henry W. Fye is financially irresponsible; therefore, the court erred in doubling the amount awarded in the verdict, while no bond, such as is required by the statute in such case made and provided, has been given.

See Howell's Statutes, secs. 8124, 8125, 8127, 8128.

16. The verdict and judgment ought to be set aside because it appears without conflict of evidence that the plaintiff is an infant, less than five years of age, and that no next friend has ever been appointed, and no bond that any next friend shall duly account for any money, has been given, and that said Henry W. Fye is without property liable to execution, and has been receiving aid from the poor fund of the city of Niles, for about one year last past.

381 17. Sec. 2119 H. S. is unconstitutional for the following reasons, to wit:

It is so written as to attempt to authorize a circuit judge privately, to have it appear to his satisfaction that the defendant is

justly liable for the damages complained of under the provision of act No. 161 of 1850, and thereupon render judgment against the defendant for double the amount of damages proved, without regard to the action of any jury and without any trial by jury as to reason for doubling any amount of damages. All in violation of the constitution of Michigan, article 6, sections 1, 8, 12, 27, 32, and in violation of constitutional rights of citizens to have public trial in civil cases in courts of record.

18. Section 2119 H. S. is inoperative to sustain the judgment rendered in this case because it contains no provision for any method by which that shall be made to appear to the circuit judge what shall be made to appear to his satisfaction under said section, and because this statute, though highly penal, is uncertain as to what may be done by the circuit judge and what may be done by the jury, and purports to authorize the court to reconsider the same evidence that a jury has considered to decide on the question whether or not the defendant is justly liable; also, further render a judgment for double the amount of damages proved, though such amount proved should exceed the verdict of a jury; also further, without the aid of a jury, to try the question whether or not the defendant was justly liable for the damages which the plaintiff's attorney had seen fit to complain of under said act 161 of 1850, although a jury might have been limited to consideration of damages that could be legally complained of under said act, and said
382 section so uses the word traveling as to render it uncertain whether any person bitten can bring any action under this section unless he was traveling when bitten.

The defendant makes this motion, claiming the benefit of act 134 of the Laws of Michigan for 1893, and protesting and reserving that nothing in this motion shall, by waiver or otherwise, lessen or impair any right of his in or concerning any bill of exceptions, and he prays the court that if this motion shall be denied, that the court may state its reasons for denying the motion, and may particularly state what particular witness' or witnesses' testimony is relied upon to support any reason given, as provided for in said act.

This motion is based upon the files and records in said cause, including the affidavits of ten of the jurors who tried said cause, filed upon the hearing of the motion to double the verdict on the 11th day of June, 1898, upon the further affidavit of Frank L. Luce, one of said jurors, this day filed in said cause, and upon the entries and records in these proceedings, in the report of the official stenographer of all proceedings on the trial of said cause, that the contents thereof may more fully and at large appear.

N. H. STEWART,
EDWARD BACON,
Attorneys for Defendant.

On the back of said motion appears the following indorsement, to wit: "Filed June 23rd, 1898. Wm. A. Forbes, county clerk."

And said motion was on that day duly entered.

383 STATE OF MICHIGAN:

The Circuit Court for the County of Kalamazoo.

RUTH I. FYE, by Her Next Friend, HENRY W. FYE, Plaintiff,
vs.
CHARLES A. CHAPIN, Defendant.

GENTS: You will please to take notice that you are herewith served with a true copy of a motion this day entered in the special motion book kept by the clerk of said court in his office in the city of Kalamazoo, for a new trial in said cause. Said motion is based upon the files and records in said cause, including the affidavits of ten of the jurors who tried said cause, filed upon the hearing of the motion to double the verdict on the 11th day of June, A. D.
384 1898, upon the affidavit of Frank L. Luce, a true copy of which you are herewith served, and upon the entries and records in these proceedings, and the report of the official stenographer of all proceedings on the trial of said cause, that the contents thereof may more fully and at large appear, and to which your attention is hereby called.

You are further hereby notified that said motion will be brought on for hearing at the opening of court on the morning of June 29th, A. D. 1898, at the court-room, in the city of Kalamazoo, or as soon thereafter as counsel can be heard.

Dated, Kalamazoo, June 23rd, A. D. 1898.

Yours, etc.,

N. H. STEWART,
EDWARD BACON,
By N. H. STEWART,
Att'ys for Def't.

To Gore & Harvey, Benton Harbor, attorneys for plaintiff.

385 STATE OF MICHIGAN:

The Circuit Court for the County of Kalamazoo.

RUTH I. FYE, by Her Next Friend, HENRY W. FYE, Plaintiff,
vs.
CHARLES A. CHAPIN, Defendant.

Defendant moves for a new trial, alleging a very large number of reasons for said motion. These reasons are, however, reducable to a very few heads, each of which will be considered.

I.

There is a general allegation of error in the refusal of the
386 court to give certain requests presented on behalf of the defendant. All these requests have been carefully examined on this motion, and the court is unable to perceive any error in the refusal to give any one of said requests. Some of these requests, if given, would have been a clear invasion of the province of the jury;

others were argumentative in their character, and were refused for this reason.

People *vs.* Hanaw, 107 Mich., 337.

II.

It is also claimed that there was error in giving certain instructions as requested on behalf of the plaintiff. With this contention the court cannot agree. If the plaintiff was entitled to recover at all, these requests were far from being unfair to the defendant.

III.

It is also alleged that the court erred in certain instructions which it is claimed were given on the court's own motion. So far as these claims are justified by the instructions given, they seem to have been fully authorized by the testimony in the case.

IV.

It is further claimed on behalf of the defendant that the verdict was excessive. The verdict was a large one, but not so large that the court would be authorized to find that it was excessive.

An affidavit of one of the jurors is presented with the motion, which affidavit is to the effect that there was talk in the presence of the jury that the defendant was a man of great wealth, while the plaintiff was poor. Such talk, if indulged in, was highly improper, and should not have been had; but there is nothing in the
387 case which could authorize the court to find that the fact of defendant's wealth or plaintiff's poverty entered into the finding of the verdict by the jury.

V.

It is also claimed that the jurors rendered a verdict for the amount upon which they agreed, believing that the same would not be doubled by the court. But this claim the court cannot consider, for several reasons.

In the first place, the verdict of a jury cannot be impeached by the affidavits of the jurors alone.

Second. The jurors were instructed as requested in behalf of defendant, that they should not double the damages found by them, but should award to the plaintiff neither more nor less than such a sum as would fairly compensate her for the injury sustained. And the jurors cannot now be heard to impugn their own verdict and testify to their disregard of the instructions of the court on the theory that they would have rendered a verdict for a sum much less than the amount of such injury had they been informed that the court might or would double such damages. Such a verdict would have been a plain violation of the oaths of the jurors.

Third. It was argued by counsel for defendant to the jury at the close of the testimony that whatever damages they might award the plaintiff might be doubled by the court in its discretion; and there was nothing in the instructions to the jury from which the

jurors could infer that the damages awarded by them might not be or would not be doubled by the court. And this court cannot cast such a reflection on the intelligence of the jurors as to find that they failed to understand either counsel or the court, or were in any way misled by the instructions given in the case.

388 VI.

It is also claimed on behalf of the defendant that the court had no authority to double the amount of damages awarded by the jury. That question was fully considered on the motion for the entry of judgment in the case, and the views of the court so fully stated as not to require repetition here. It is now urged that the act authorizing the award of double damages in cases of this nature is unconstitutional; but that question is one which this court must decline to consider.

The foregoing are the reasons for which, in the judgment of this court, the motion for a new trial ought to be denied. Counsel for defendant request that the court state what particular testimony of any witness or witnesses is relied upon to support any reason given for denying the motion. This request is one which the court might properly decline to comply with, as the court could not be required to state what testimony is relied on in deciding a motion for a new trial. If there is any principle on which this could be asked, a jury might in every case be required to state, in a special finding, the testimony on which they render their verdict. It may, however, be stated out of courtesy to counsel, that so far as the reasons hereinbefore given have any relation to the testimony in the case, they are founded upon a careful consideration of all the testimony in the case, whether given on the part of the plaintiff or on the part of the defendant.

The motion for a new trial should be denied, but without costs.

GEO. M. BUCK,
Circuit Judge.

389 On the back of these findings is indorsed the following: "Filed October 10th, 1898. Wm. A. Forbes, county clerk."

At a general term of the circuit court for the county of Kalamazoo, continued and held at the court-house, in the city of Kalamazoo, in said county, on Monday, the 10th day of October, A. D. 1898.

Present: Hon. George M. Buck, circuit judge.

Court opened for business in due form.

RUTH I. FYE, by Next Friend,
vs.
CHARLES A. CHAPIN.

In this cause a motion having been heretofore filed, June 23, 1898, moving the court for an order setting aside the verdict of the jury heretofore rendered in said cause and granting a new trial

thereof, for reasons therein stated, and the court after hearing counsel for the respective parties, it is ordered that said motion be and the same is hereby denied.

Thereupon the court adjourned until tomorrow morning at nine o'clock.

Read, approved and signed.

GEO. M. BUCK,
Circuit Judge.

Attest: W. A. FORBES, *Clerk.*

390 At a general term of the circuit court for the county of Kalamazoo, continued and held at the court-house, in the city of Kalamazoo, in said county, on Saturday, the 15th day of October, A. D. 1898.

Present: Hon. George M. Buck, circuit judge.

Court opened for business in due form.

RUTH I. FYE, by Next Friend,
vs.
CHARLES A. CHAPIN.

On motion of N. H. Stewart and Edward Bacon, attorneys for Charles A. Chapin, it is ordered that said defendant be and hereby is allowed until the twenty-fifth day of October in which to prepare and file a bill of exceptions to the statements and reasons set forth by the court in disposing of said defendant's motion for a new trial, a copy of said exceptions to be served within said time on Victor M. Gore, one of the plaintiff's attorneys.

Thereupon the court adjourned until Monday morning at nine o'clock.

Read, approved and signed.

GEO. M. BUCK,
Circuit Judge.

Attest: WM. A. FORBES, *Clerk.*

391 STATE OF MICHIGAN:

The Circuit Court for the County of Kalamazoo.

RUTH I. FYE, an Infant, by HENRY W. FYE, Her Next Friend,
Plaintiff,
vs.
CHARLES A. CHAPIN, Defendant.

Exceptions on Behalf of Defendant to Decision of Circuit Judge Denying Motion for New Trial.

Now comes said defendant, by N. H. Stewart and Edward Bacon, his attorneys, and excepts to the decision of the circuit judge in refusing the motion for new trial on behalf of the defendant in this suit, and whereas said circuit judge, in refusing said
392 motion has, to show reasons for such decision, made six paragraphs in writing, designated respectively, I, II, III, IV, V, VI, said defendant, by his said attorneys, excepts as follows:

1. As to paragraph I, the defendant excepts to so much of said paragraph as is as follows: "There is a general allegation of error in the refusal of the court to give certain requests presented on behalf of the defendant. All these requests have been carefully examined, and the court is unable to perceive any error in the refusal to give any one of said requests."

2. The defendant further excepts to so much of said paragraph I as is as follows: "Some of these requests, if given, would have been a clear invasion of the jury."

3. The defendant further accepts to so much of said paragraph I as is as follows: "Others were argumentative in their character, and were refused for this reason."

4. As to paragraph II, the defendant excepts thereto.

5. As to paragraph III, the defendant excepts thereto.

6. As to paragraph IV, the defendant excepts to so much of said paragraph as is as follows: "It is further claimed on behalf of the defendant that the verdict was excessive. The verdict was a large one, but not so large that the court would be authorized to find that it was excessive."

7. The defendant also excepts to so much of said paragraph as commences with the words "An affidavit," and terminates with the words, "verdict by the jury."

393 8. As to paragaph V, the defendant excepts to so much of said paragraph as is as follows: "It is also claimed that the jurors rendered a verdict for the amount upon which they agreed, believing that the same would not be doubled by the court, but this claim the court cannot consider, for several reasons."

9. The defendant also excepts to so much of said paragraph as purports to state the first of the last-mentioned reasons.

10. The defendant also excepts to so much of said paragraph as purports to state the second of the last-mentioned reasons.

11. The defendant also excepts to so much of said paragraph as purports to State the third of the last-mentioned reasons.

12. As to paragraph VI, the defendant excepts to so much thereof as commences with the words, "It is also claimed on behalf of the defendant," and terminates with the words, "repetition here."

13. The defendant also excepts to so much of said paragraph as is as follows: "It is now urged that the act awarding damages in cases of this kind is unconstitutional. That question is one which the court must decline to consider."

14. The defendant also excepts to so much of said paragraph as commences with the words, "It may, however," and terminates with the words, "plaintiff or on the part of the defendant."

15. The defendant also excepts to so much of the last lines of said paragraph as is as follows: "The motion for a new trial should be denied."

16. The defendant further excepts to this, that the circuit 394 judge disregarded all claims of the defendant that section 2119 of Howell's Annotated Statutes of Michigan was inoperative to sustain the judgment rendered in this suit.

17. The defendant also excepts to this, that the circuit judge dis-

regarded all claims of the defendant that the last-mentioned section, 2119, is inconsistant with the constitution of the State of Michigan, reference being had to article VI, sections 1, 8, 12, 27, 32.

18. The defendant also excepts to this, that the last-mentioned section, 2119, of Howell's Statutes is in violation of article V of the amendments to the Constitution of the United States, reference being made to so much of said amendment as is in these words: "Nor be deprived of life, liberty or property, without due process of law."

19. The defendant further excepts in this, that the last-mentioned section, 2119, is in violation of article 7 of the amendments to the Constitution of the United States.

20. The defendant also excepts in this, that the court ought to have granted said motion for a new trial, because there was no evidence sufficient to support the verdict aforesaid.

21. The defendant also excepts in this, that there was no evidence sufficient to support the judgment aforesaid.

22. The defendant also excepts to this, that the verdict was contrary to the law and the evidence.

The defendant makes the exceptions aforesaid without
395 waiving any other right of objection or exception not hereinbefore specified.

N. H. STEWART,
EDWARD BACON,
Defendant's Attorneys.

A copy of the above exceptions *were* duly and truly served on plaintiff's counsel, as required by the order.

On the back of the foregoing exceptions is the following indorsement: "Filed October 20th, 1898. Wm. A. Forbes, county clerk."

396 STATE OF MICHIGAN:

The Circuit Court for the County of Kalamazoo.

RUTH I. FYE, by HENRY W. FYE, Her Next Friend, Plaintiff and Appellee,
vs.
CHARLES A. CHAPIN, Defendant and Appellant.

Assignments of Error.

And now comes the defendant and appellant, Charles A. Chapin, by N. H. Stewart and Edward Bacon, his attorneys, and says that in the record and pleadings, and in the decisions and rulings, and in the verdict and judgment in said cause in the said circuit court, there are manifest errors in the following particulars, to wit:

397 1st. The court erred in refusing to strike out that portion of an answer made by Hannah Fye on direct examination, where she says, "She was afraid of him. She never had seen such a large dog."

2nd. The court erred in overruling the objection of counsel for

the defendant to the following question put to plaintiff's witness, Hannah Fye, upon her direct examination, to wit: "Now, you may state what was done immediately after the injury. You may state what was done and what was said by the parties present," and the question following.

3rd. The court erred in allowing the photograph, "Exhibit A," offered by counsel for the plaintiff in evidence as against the objection of counsel for defendant.

4th. The court erred in overruling the defendant's objection to the following question, put to and answered by plaintiff's witness, Hannah Fye, on her direct examination, to wit: Q. "What was the condition of this child's breath before this injury?" A. "She always seemed perfectly healthy. This injury was such a shock to her nerves that she has never been the same since."

And in refusing to strike out the answer as given, upon the motion of defendant's counsel.

5th. The court erred in overruling objection of defendant's counsel to the introduction in evidence of the fork, "Exhibit B," by counsel for the plaintiff.

6th. The court erred in overruling the following objection of counsel for the defendant, to wit:

"We wish to formally introduce an objection to all evidence as to spasm-, fits, and epilepsy, as nothing of the kind is mentioned in the declaration."

398 7th. The court erred in allowing any and all testimony offered by counsel for the plaintiff on the trial of said cause that showed, tended to show, or related to spasms, fits or epilepsy under the pleadings in the case.

8th. The court erred in overruling the objection of counsel for defendant to the following question put to witness Hannah Fye on direct examination by counsel for plaintiff, to wit:

"And I will ask you if the symptoms of this second attack were similar to those of the first attack?"

9th. The court erred in not sustaining the objection of counsel for the defendant to the following question put to the witness Hannah Fye, by counsel for the plaintiff on her direct examination, to wit:

"You mean they were similar to the first, but they were not, as you stated, so severe?"

10th. The court erred in overruling the defendant's objection to the following questions put to plaintiff's witness, Hannah Fye, by her counsel on redirect examination, to wit:

"Counsel drew out from you a statement that was made by Alice Harcourt when Mr. Fye stated he would as soon have a horse in the house as that dog. What was that statement made in reply of Miss Harcourt?" and—

"Well, you stated, did you not, something about Alice speaking?"

11th. The court erred in overruling the objection of counsel for defendant to the testimony of George Exner, a witness for plaintiff, as to having been bitten by defendant's dog, and specifically to the

following question put by counsel for plaintiff on direct examination, to wit:

399 "Do you remember how long?"

12th. The court erred in overruling the objection of defendant's counsel to the following question put to plaintiff's witness on his direct examination, to wit:

"How did the dog appear as to being angry or otherwise at that time?"

13th. The court erred in overruling motion of counsel for defendant to strike out certain of the testimony given by plaintiff's witness, George W. Boon, on his direct examination, to wit:

"I move to strike that out as irrelevant and immaterial. The dog was in an enclosure."

14th. The court erred in overruling the objection of counsel for defendant to the following questions put to plaintiff's witness, Henry Fye, on his direct examination, to wit:

"What was the injury?" and "just tell the jury about the injury."

15th. The court erred in overruling the objection of counsel for defendant to the following question put to plaintiff's witness, Dr. O. A. La Crone, on his direct examination, to wit:

"Doctor, how would you define epilepsy?"

And to all testimony upon that subject as hereinbefore stated.

16th. The court erred in overruling the objection of counsel for defendant to the following question put to plaintiff's witness, Dr. O. A. La Crone, on his direct examination, to wit:

"Well, which is the most susceptible to physical injury?"

400 17th. The court erred in overruling the objections of counsel for the defendant to the following hypothetical question put to plaintiff's witness, Dr. O. A. La Crone, on his direct examination, to wit:

"Doctor, supposing that on the 16th of December, 1897, an assault was made by a large dog upon a child—female child between four and five years of age, inflicting a wound with his teeth upon her scalp and face, that the child was confined some three weeks in bed, showing, during this time, great nervous depression and mental disturbance; that after three weeks and until April 14, and during the three weeks she had complained a great deal of pain in her head and her head hurting her, and had at various times, particularly during the night-time, shown mental disturbances, complaining or making exclamations that there was dogs and similar statements, and supposing that along about the latter part of March the child had the measles, which confined her to her bed for about three days; that she was kept in thereafter for a week or so, that on the 14th she had no cold, that her bowels were as usual; that on that morning she had a flushed face, more or less flushed, and that about 11 o'clock that day she was put to sleep, after making complaints that she had not felt well, and shortly after she aroused in a spasm characterized by stiffening of the limbs, and arching of the back, throwing her head back and eyes staring, dilated pupils, frothing at the mouth; her teeth very firmly set, so much so as to make

impressions on the metal of a fork, Exhibit B; that such spasm lasted from five, anywhere from five to fifteen minutes; and that after coming out of such spasm the child was white and pale and livid, and remained in rather a lifeless condition for an hour or more. In connection with that, consider also that a sister of
401 the mother had died with some lung affection; that there was nothing in the nature of epilepsy in the family of the mother nor the father. I ask you, under that state of facts, what in your opinion would be most likely of any symptom or any causes named in this statement to induce the epilepti-form convulsions of the 14th?

And to all that followed in relation to that subject.

18th. The court erred in overruling the objection of counsel for defendant to the following questions put to plaintiff's witness, Dr. O. A. La Crone, on his direct examination, and all that related to them and that subject, to wit:

"Now, Doctor, apart from any specific injury to the nervous system inducing a nervous disease, or personal injury to the head, I ask you this question—what is the probable effect upon the nervous system of a child between four and five years of age of an assault by a large dog, inflicting such injuries as were inflicted upon this child, considering the shock and fright to the nervous system as well as the physical injury itself."

Mr. GORE: Well, in order to avoid running over the history, your honor, I will add to the question, "injured in the manner stated in the former question."

19th. The court erred in refusing to allow counsel for the defendant to put the following question to Dr. O. A. La Crone on his cross-examination, to wit:

"Now, Doctor, we will suppose that this child was injured on the 16th day of December, 1897, and showed no more manifestations of injuries or disease than would ordinarily follow from scalp wound of the kind, and that during middle of March or the fore part of April the child had an attack of sickness from measles, and that on the 14th of April following it had a spasm whereby it frothed
402 at the mouth and blood oozed through its teeth from biting the end of the tongue, as the testimony shows."

20th. The court erred in overruling the objections of counsel for defendant to the following questions put to plaintiff's witness, Doctor A. W. Crane, on his direct examination, to wit:

"Doctor supposing that on the 16th of December, 1897, an assault was made by a large dog upon a child—female child between four and five years of age, inflicting a wound with his teeth upon her scalp and face, that the child was confined some three weeks in bed, showing, during this time, great nervous depression and mental disturbance; that after three weeks and until April 14, and during the three weeks she had complained a great deal of pain in her head and her head hurting her, and had at various times, particularly during the night-time, shown mental disturbances, complaining or making exclamations that there was dogs and similar statements, and supposing that along about the latter part of March the child had the measles, which confined her to her bed

for about three days; that she was kept in thereafter for a week or so, that on the 14th she had no cold, that her bowels were as usual; that on that morning she had a flushed face, more or less flushed, and that at about 11 o'clock that day she was put to sleep, after making complaints that she had not felt well, and shortly after she aroused in a spasm characterized by stiffening of the limbs, and arching of the back, throwing her head back and eyes staring, dilated pupils, frothing at the mouth; her teeth very firmly set, so much so as to make impressions on the metal of a fork, Exhibit B; that such spasm lasted from five, anywhere from five to fifteen minutes; and that after coming out of such spasm the child was white and pale and livid, and remained in rather a lifeless condition for an hour or more. In connection with that, consider also that a sister of the mother had died with some lung affection; that there was nothing in the nature of epilepsy in the family of the mother nor the father. I ask you, under that state of facts, what in your opinion would be most likely of any symptom or any causes named in this statement to induce the epileptiform convulsions of the 14th?"

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A. Why, according to the testimony that I have given in, that fright and the hemorrhage would be sufficient causes for epilepsy, and then there is another part to that, as to whether I consider these causes all operating to produce epilepsy. Is that the intention?

Q. Yes, whether they operated to produce it.

A. All I could say on that point is that the attack as described to me made it an epileptiform or epilepti-convulsion; and one of the reasons why I thought it was an epileptoid convulsion is not mentioned in that question.

Q. What is it, Doctor?

A. That is, that there was the epileptic cry at the beginning of the seizure, a cry about half way between a groan and a scream, that shows that there was what we call an aura at the beginning of the attack. That is one of the most characteristic things about epilepsy. I could say, then, that it was an epileptoid convulsion; but whether or not it was true epilepsy would have to rest until there was time for other attacks to come.

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21st. The court erred in overruling the objection of counsel for the defendant to the following questions put to plaintiff's witness, Doctor Rush McNair, on his direct examination, to wit:

"Doctor, supposing that on the 16th of December, 1897, an assault was made by a large dog upon a child—female child between four and five years of age, inflicting a wound with his teeth upon her scalp and face, that the child was confined some three weeks in bed, showing, during this time, great nervous depression and mental disturbance; that after three weeks and until April 14, and during the three weeks she had complained a great deal of pain in her head and her head hurting her, and had at various times, particularly during the night-time, shown mental disturbances, complaining or making exclamations that there was dogs and similar statements, and supposing along about the latter part of March the child had the measles, which confined her to her bed

for about three days; that she was kept in thereafter for a week or so, that on the 14th she had no cold, that her bowels were as usual; that on that morning she had a flushed face, more or less flushed, and that about 11 o'clock that day she was put to sleep, after making complaints that she had not felt well, and shortly after she aroused in a spasm characterized by stiffening of the limbs, and arching of the back, throwing her head back and eyes staring, dilated pupils, frothing at the mouth; her teeth very firmly set, so much so as to make impressions on the metal of a fork, Exhibit B; that such spasm lasted from five, anywhere from five to fifteen
405 minutes; and that after coming out of such spasm the child was white and pale and livid, and remained in rather a lifeless condition for an hour or more. In connection with that, consider also that a sister of the mother had died with some lung affection; that there was nothing in the nature of epilepsy in the family of the mother nor the father. I ask you, under that state of facts, what in your opinion would be most likely of any symptom or any causes named in this statement to induce the epileptiform convulsions of the 14th?"

Q. (Continuing:) "The 14th of April, and I will add that the convulsions were introduced by a peculiar scream."

22nd. The court erred in overruling the objections of counsel for the defendant to the following questions put by counsel for the plaintiff to Doctor Z. T. Baldwin, defendant's witness, on his cross-examination, to wit:

"Q. I suppose you had learned at that time concerning their position in society there," and

"Q. You were conscious of that fact, were you not, when called to treat this injury?"

23rd. The court erred in overruling the objection of counsel for the defendant to the following question put to defendant's witness, Dr. Z. T. Baldwin by counsel for the plaintiff, on his cross-examination to wit: "Q. Before the subpœna was served upon you to appear here, had any one representing the Chapins come to have a talk with you to see what you knew?"

24th. The court erred in sustaining the objections of counsel for the plaintiff to the following questions put to defendant's witness, Dr. Arthur McGugan, on his direct examination, to wit: "Q. Now, Doctor, considering the injury in all its scope, what have
406 you to say of the alleged causes of the spasm or convulsion of the 14th of April, 1898, and the 16th of April of the same year?" and

"Q. Doctor, considering the injury in all its scope, with reference to the manifestations of the child on the 13th and 14th days of April, just preceding the alleged spasm, as you understand them from the testimony produced in this case; tell us, if you please, what in your opinion there was in this injury to produce any such results."

25th. The court erred in sustaining the motion of counsel for the plaintiff to strike out the whole or any part of the following answer of defendant's witness, Dr. Arthur McGugan, upon his direct

examination, to wit: "A. Well, in the first place there is no evidence whatever of injury to the child's skull, either in its present condition or on account of symptoms that follow; because I know that injuries of the skull result in different symptoms than those I have heard described; and furthermore, injuries of the—an injury to the skull could not, in my opinion, have occurred from the causes described. That is all."

26th. The court erred in sustaining the objection of counsel for the plaintiff to the following question put to defendant's witness Dr. Arthur McGugan on his direct examination, to wit: "Q. We will put the question this way. Doctor, considering your examination of the skull and the wound and what you have heard testified to here with reference to the same, what is your opinion as to whether or not there has been any injury inflicted upon the skull or the brain of this child?"

27th. The court erred in sustaining the objection of coun-
407 sel for the plaintiff to the following question put to defendant's witness, Dr. Arthur McGugan on his direct examination, to wit: "Q. Doctor, suppose the child was allowed to eat everything between meals that it chose; what do you say, as to whether or not the habit of irregular eating would be likely to cause or produce spasms such as have been described the child had in this case?"

28th. The court erred in overruling the objection of counsel for the defendant to the following question put to defendant's witness Dr. F. R. Belknap, on his cross-examination, by counsel for plaintiff, to wit: "Q. I suppose you or your father, one or both of you have treated the Chapin family in Niles at various times?"

29th. The court erred in refusing to allow counsel for the defendant's witness to show by defendant's witness, Dr. F. R. Belknap, on redirect examination, what counsel proposed to show from Dan and in refusing to allow said witness to answer the following question, to wit: "Q. On nervous diseases. Do you know whether he says anything about there may be epilepsy without unconsciousness?"

30th. The court erred in sustaining the objection of counsel for plaintiff, to the following question put to defendant while on the witness stand in his own behalf on direct examination, to wit "Q. Go on and relate what those circumstances were, if you please and what you ascertained with reference to them."

31st. The court erred in refusing to direct a verdict in favor of the defendant, though duly requested on behalf of said defendant so to do.

32nd. The circuit court erred in refusing the defendant's written request No. 1.

408 33rd. And in refusing the defendant's written request No. 2.

34th. And in refusing the defendant's written request No. 3.

35th. And in refusing the defendant's written request No. 4.

36th. And in refusing the defendant's written request No. 5.

37th. And in refusing the defendant's written request No. 6.

38th. And in refusing the defendant's written request No. 8.
39th. And in refusing the defendant's written request No. 9.
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41st. And in refusing the defendant's written request No. 11.
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62nd. And in refusing the defendant's written request No. 41.
410 63rd. And in refusing the defendant's written request No. 42.
64th. And in refusing the defendant's written request No. 43.
65th. The circuit judge erred in granting the plaintiff's written request No. 1.
66th. And in granting plaintiff's written request No. 2.
67th. And in granting plaintiff's written request No. 3 as modified by the court.
68th. And in granting plaintiff's written request No. 4 as modified by the court.
69th. And in granting plaintiff's written request No. 5 as modified by the court.
70th. The circuit judge erred in so much of his charge to the jury on his own motion as is included between (1) and (2), and commencing with the words "The plaintiff goes further," and ending with the words "her claims in this regard."
71st. And in so much as is included between (2) and (3) and commencing with the words "If you find," and ending with the words "damages in this case."
72nd. And in so much of said charge as is included between (3) and (4) and commencing with the words "Now as bearing," and ending with the words "when based upon facts."
73rd. And in so much of such charge as is in these words: "So

that it will be your duty to first ascertain whether it is based on the facts as you them to be proven in the case or whether it is not."

74th. And in so much of said charge as is as follows: "If
411 you find that the facts assumed in the hypothetical questions put to these medical witnesses are the facts that actually exist in this case, then you are to weigh the opinions of the physicians as to the result of those facts, or the want of result, whichever way it may be."

75th. And in so much of such charge as is between (4) and (5) and commencing with the words "And so far," and ending with the words "fairly worth."

76th. And in so much of said charge as is between (5) and (6) and commencing with the words "And in weighing," and ending with the words "yielding to it due force."

77th. The circuit court erred in granting the plaintiff's application to render judgment for double the amount of the verdict, notwithstanding the objections on behalf of the defendant to such application.

78th. The circuit court erred in its decision refusing the motion for a new trial on behalf of the defendant, notwithstanding all the reasons alleged on behalf of the defendant in support of such motion.

79th. The circuit court erred severally in disregarding every one of the separately enumerated reasons alleged as aforesaid on behalf of the defendant in support of said motion. The defendant here repeats each of said enumerated reasons separately, and separately and successively alleges that the court erred in disregarding the same.

80th. The circuit court erred in his reasons aforesaid for refusing the motion for a new trial severally in the matters set forth in the defendant's exceptions to said decision and numbered respectively 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22.

412 81st. The defendant, for further assurance in specifically assigning errors, repeats consecutively each of the last-mentioned numbers, and before each of said numbers so repeated inserts successively the words, "The circuit court erred in the matter excepted to in this exception."

82nd. There is also error in this that the verdict aforesaid is excessive. There is also error in this that the judgment aforesaid is excessive.

83rd. There is also error in this, that the evidence is insufficient to support the judgment.

84th. There is also error in this, that the verdict is general on both counts in the declaration aforesaid; the second count complains of damages as follows: "Her mental faculties ruined and her blood poisoned and contaminated," meaning to claim damages to be awarded in relation to hydrophobia, as more fully appears by reference to said count, yet there is no evidence tending to show that the defendant is justly liable for any such damages.

84½. The court erred in doubling the verdict of ten thousand dollars returned by the jury in said cause.

84¾. The court erred in doubling the verdict of ten thousand dollars returned by the jury in said cause without finding or stating any ground for so doing.

85th. There is also error in this, that the circuit court erred in doubling the amount of damages assessed by the jury, there being no legal evidence in the case from which it can appear, to the reasonable satisfaction of the court that the defendant is justly liable for the damages complained of in the declaration aforesaid,
413 especially for so much as is complained of by the words, "her mental faculties ruined, and her blood poisoned and contaminated."

86th. There is also error in this, that the court erred in doubling the amount of damages assessed by the jury because the plaintiff complained of damages under the provisions of the act mentioned in the declaration aforesaid, for which the defendant was not justly liable, to wit: for the ruin of plaintiff's mental faculties.

87th. There is also error in this, that section 2119 of Howell's Annotated Statutes is inoperative to sustain the judgment rendered in this cause, because it contains no provision for any method by which that shall be made to appear to the circuit judge which said statute purports to provide for appearing to his satisfaction, and because this statute, though highly penal, is uncertain as to what may be done by the circuit judge, or what may be done by the jury, and purports to authorize the court to reconsider the same evidence that the jury has considered, and to decide on the question, whether or not the defendant is justly liable, and further to render a judgment for double the amount of damages proved, although such an amount deemed by the circuit judge to be proved, might exceed the amount of the verdict of the jury.

89th. There is also error in this, that said act 161 of the Laws of Michigan for 1850, purports to authorize the circuit judge, without the aid of the jury, to try the question, whether or not the defendant was justly liable for the damages which the plaintiff's attorney had seen fit to complain of under said act, although a jury might have been limited to the consideration of damages that could
414 legally be complained of under said act, and the judgment aforesaid depends on such pretended authority.

89th. There is also error in this, that so much of act 161 of the Laws of Michigan for 1850, was repealed by the constitution of the State of Michigan as it now exists, that the judgment aforesaid, rendered under the declaration aforesaid, ought to be reversed.

90th. There is also error in this, that the statute mentioned in the declaration aforesaid was so far inoperative that the judgment dependent thereon was illegal.

91st. There is also error in this, that no statute mentioned in the declaration aforesaid was so far operative that the judgment aforesaid rendered thereon was legal and valid.

92nd. There is also error in this, that the circuit judge could not, under any statutory or other authority, legally render judgment, as

he did, for double the amount of a verdict under his direction rendered, to fix an amount of damages, there being no particular amount proved by any evidence whatsoever.

93rd. There is also error in this, that section 2119 of Howell's Annotated Statutes of Michigan, mentioned in the declaration aforesaid, is unconstitutional, being so written as to attempt to authorize the circuit judge, privately to have it appear to his satisfaction, that the defendant is justly liable for the damages complained of under the provisions of act 161 of the Laws of Michigan for 1850, and thereupon render judgment against the defendant for double the amount of damages proved, without regard to the action of any jury, and without any trial by jury as to any reasons for doubling any amount of damages, all being inconsistent with the now
415 existing constitutional provisions of the State of Michigan, specified as follows: Article VI, sections 1, 8; 11, 27, 32.

94th. There being, also, inconsistency with the first constitution of the State of Michigan, article 1, sections 9, 10, 21, and there being inconsistency with the provisions of the ordinance of 1887, article 2, said ordinance being enacted by the Congress of the United States, entitled, "An ordinance for the government of the territory of the United States northwest of the Ohio river," especially as to the words of said article in relation to the right of trial by jury and judicial proceedings according to the course of common law. There being, also, inconsistency with two provisions in the Constitution of the United States, especially the words of amendment 5, as to due process of law, and of amendment 7, assuring right of trial by jury.

95th. There is also error in this, the statute aforesaid mentioned, in the declaration aforesaid, and on which the judgment aforesaid depends, is inconsistent with article 5 of the amendments to the Constitution of the United States, requiring that no person shall be deprived of life, liberty or property without due process of law.

96th. There is also error in this that the statute aforesaid mentioned in the declaration aforesaid, and on which the judgment aforesaid depends, is inconsistent with article 7 of the amendments to the Constitution of the United States, requiring that the right of trial by jury shall be preserved.

97th. There is also error in this that the words of section 2119 of Howell's Annotated Statutes of Michigan, being section 2,
416 act 161 of the Laws of Michigan for 1850, on which the judgment aforesaid depends, said words being, "If it shall appear to the satisfaction of the court by the evidence, that the defendant is justly liable for the damages complained of under the provisions of this act, the court shall render judgment against such defendant for double the amount of damages proved," purport to authorize the circuit judge to act as a chancellor, regardless of the verdict of a jury, and in a manner inconsistent with constitutional provisions, requiring the distinction of equity proceedings from common-law proceedings, and with the law of the land.

98th. There is also error in this that the statutory words copied in the last foregoing assignment of error, on which the judgment

aforesaid depends, purport to authorize the circuit judge to act as a juror in a manner inconsistent with the law of the land. There is also error in this, to wit: that by the record and proceedings aforesaid, it appears that the circuit court gave judgment in favor of the plaintiff and against the defendant, whereas by the law of the land, the said judgment should have been in favor of the defendant and against the plaintiff, and the said defendant therefore now alleges and asserts, and before the supreme court of the State of Michigan, will pray that the judgment and proceedings aforesaid, for the errors aforesaid appearing as aforesaid, may be reversed, annulled, and altogether held for naught, and that the defendant may be restored to all things which he has lost by means thereof.

N. H. STEWART,
EDWARD BACON,
Attorneys for Defendant.

417 And inasmuch as the said several matters so produced and given in evidence, and the said objections, offerings and exceptions to said rulings and charge, and to the record, decision and findings on the motion for a new trial do not appear of record, the said circuit judge, at the request of counsel for the defendant and appellant, hath, this 28th day of December, A. D. 1898, signed this bill of exceptions, and I certify that so far as the questions and answers are concerned in said bill of exceptions, they are necessary to a full understanding of the questions of law raised therein.

GEO. M. BUCK,
Circuit Judge.

In this bill of exceptions certain witnesses, to wit, Hannah Fye, Hattie McMichael, Henry W. Fye, Doctor Z. T. Baldwin, Effie Stevens, Henry Burge, Alice Harcourt, on the trial of this cause, testified tending to show all that actually took place at the time the plaintiff claims to have received her injuries, in December, 1897, and in this bill of exceptions all of such testimony is given in full.

On the trial of this cause certain witnesses, to wit, Hannah Fye, Hattie McMichael, Henry W. Fye, Dr. Z. T. Baldwin, Mrs. Ella Burge, testified to all that actually took place in April, 1898, when the plaintiff claims to have had spasms, or fits, and in this bill of exceptions all of such testimony is given in full.

On the trial of this cause it appeared, without conflict of evidence, that the following-named witnesses, to wit, Drs. La Crone,
418 McNair and Crane, never saw the plaintiff prior to May 23rd, 1898, as the trial of said cause commenced on the 25th day of May, 1898.

Filed December 29th, 1898.

W. A. FORBES, *Clerk.*

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19. The general health and condition of the plaintiff up to and including the time of the trial.

Plaintiff's witnesses:

Mrs. Hannah Fye 27, 28, 29, 35, 183
Mrs. McMichael 70, 71
Henry Fye 95
426 Dr. Crane 131

Defendant's witnesses:

Henry Berge 225
Mrs. Ada Moore 229, 231
Mrs. Mary Smith 232
Henry Moore 235
Sarah Kantrowitz 236
Dr. McGugan 260

20. The condition of the scar.

Plaintiff's witnesses:

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Mrs. Hannah Fye 35
Henry Fye 96
Dr. Crane 123, 136
Dr. McNair 142, 147, 151

Defendant's witnesses:

Dr. Belknap 246
Dr. McGugan 261, 263

21. Hypothetical questions, answers and objections.

Plaintiff's witnesses:

Dr. La Crone 104, 105
Dr. Crane 118, 124
Dr. McNair 139, 151, 163

Defendant's witnesses:

Dr. Belknap 245, 246, 247, 249, 305, 315
Dr. McGugan 265, 266, 267, 270, 274, 276

22. Epilepsy and ordinary fits of children distinguished.

Plaintiff's witnesses:

Dr. Crane 126, 127

427 Defendant's witnesses:

Dr. Belknap 244, 245, 310, 312, 315
Dr. McGugan 273, 279
Dr. Baldwin 320, 322, 323

23. Liability of the action of exciting causes.

Plaintiff's witnesses:

Dr. La Crone 100, 101, 106, 108, 109, 113, 114, 115
Dr. Crane 117, 118, 123, 125, 126, 127
Dr. McNair 139

Defendant's witnesses:

Dr. Baldwin 198, 199, 200
Dr. Belknap 245
Dr. McGugan 269

24. The exciting cause in this case.

Plaintiff's witnesses:

Dr. La Crone 105
Dr. Crane 125, 126, 134
Dr. McNair 140, 142, 143, 145, 152, 153

Defendant's witnesses:

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Dr. Baldwin... ..... 189, 190, 304, 305, 307
Dr. McGugan..... 270

25. The uncontradicted testimony of Dr. Baldwin.

Defendant's witnesses:

Dr. Baldwin..... .... 189 to 193 and 197

26. Indigestion a common exciting cause.

Defendant's witnesses:

Dr. McGugan 266

27. The epileptic cry.

428 Plaintiff's witnesses:

Dr. Crane..... 120
Dr. McNair 156

Defendant's witnesses:

Dr. McGugan 275, 276

28. The basic cause of alleged epilepsy.

Defendant's witnesses:

Dr. McGugan 269, 297

29. The nature of basic causes in general.

Defendant's witnesses:

Dr. McGugan 272
Dr. Baldwin 321

(Here follows photograph marked page 429.)

430 STATE OF MICHIGAN, *ss:*

In the Supreme Court.

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the annexed and foregoing printed record, in the case of Ruth I. Fye *vs.* Charles A. Chapin, consisting of 418 pages besides index and Exhibit A, is a true and correct copy of the printed record upon which the case was heard and decided in said court; that I have compared the same with the original now on file in my office, and that it is a true copy of the same and of the whole thereof.

Seal of the Supreme Court of Michigan, Lansing.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at the city of Lansing, this eleventh day of December, A. D. 1899.

CHAS. C. HOPKINS,
Clerk Supreme Court of the State of Michigan.

Taken Dec. the 23d, 1897.
FRED DURNHAM.

EXHIBIT "A," May 25th. 1898.
CHAS. H. McGURREN,
Stenographer.

No. 184
Chapin
3rd Ct
Sp 429

431 UNITED STATES OF AMERICA.

STATE OF MICHIGAN, } ss:
Kalamazoo County, }

I, Ashley Clapp, clerk of the circuit court for the county of Kalamazoo, in the State of Michigan, by virtue of the foregoing "writ of error," and in obedience thereto, do hereby certify that the following pages and printed record comprised of 418 pages of printed matter, exclusive of the index and photographic exhibit, and bearing the certificate of Charles C. Hopkins, clerk of the supreme court of said State of Michigan, contains a true and complete transcript of the record and proceedings sent to and had in said supreme court of said State of Michigan in the case of Charles A. Chapin, plaintiff in error, against Ruth I. Fye, by her next friend, Henry W. Fye, defendant in error, and that the opinion of said supreme court as attested by said Charles C. Hopkins, hereto attached, is a correct and true copy of the opinion rendered in said cause by said supreme court, and that a true transcript of the remittiture, now in my office, is also hereto attached, and I certify that all of said above and foregoing mentioned and enumerated transcripts are complete of the originals as they remain of record and on file in said office, and that the six briefs attached together and certified to by said Charles C. Hopkins, clerk of said supreme court, together with the assignments of error of said plaintiff in error, were duly filed in said clerk's office, to be made a part of this return to said writ of error, and the same are hereby returned and made a part thereof.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Kalamazoo, in the county of Kalamazoo, in the said State of Michigan, this 5th day of January, A. D. 1900.

[Seal Circuit Court, Kalamazoo Co., Michigan.]

ASHLEY CLAPP, *Clerk.*

432 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judge of the circuit court for the county of Kalamazoo, State of Michigan, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court on a remittitur from the supreme court of the State of Michigan, before you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Ruth I. Fye, by her next friend, Henry W. Fye, plaintiff, and Charles A. Chapin, defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitu-

tion, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in ques-
433 tion the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 15th day of December, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
H. B. BROWN,
Associate Justice of the Supreme Court of the United States..

434 [Endorsed:] 464–12. Fye *vs.* Chapin. Writ of error. U. S. Supreme Court. Filed Dec. 18, 1899. Ashley Clapp, county clerk. Original. Writ of error.

435 UNITED STATES OF AMERICA, *ss:*

To Ruth I. Fye, by her next friend, Henry W. Fye, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the circuit court of the county of Kalamazoo, State of Michigan, wherein Charles A. Chapin is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry B. Brown, associate justice of the Supreme Court of the United States, this 15th day of December, in the year of our Lord one thousand eight hundred and ninety-nine.

H. B. BROWN,
Associate Justice of the Supreme Court of the United States.

436 [Endorsed:] Original. Original citation. We hereby admit that on this 19th day of December, A. D. 1899, at the city of Benton Harbor, in the county of Berrien and State of Michigan, Edward Bacon duly served on us a copy of the within citation. Dated December 19th, A. D. 1899. Gore & Harvey, attorneys for the within-named defendant in error.

On this nineteenth day of December, in the year of our Lord one thousand eight hundred and ninety-nine, personally appeared Edward Bacon, of the city of Niles, Berrien county, Michigan, before me, the subscriber, a notary public in and for said county, and makes oath that he delivered a true copy of the within citation to Victor M. Gore, of the law firm of Gore & Harvey, attorneys for the within-named defendant in error, on the 19th day of December, 1899, in said county, and thereupon said Victor M. Gore signed his name to the admission of service hereon endorsed.

EDWARD BACON.

Sworn to and subscribed the 19th day of December, A. D. 1899.

[Seal of Notary Public, Berrien County, Niles, Michigan.]

BELLE CROSS,
Notary Public, Berrien County, Michigan.

437 UNITED STATES OF AMERICA:

In the Supreme Court.

CHARLES A. CHAPIN, Plaintiff in Error,
vs.
RUTH I. FYE, by HENRY W. FYE, Her Next Friend, Defendant in Error.

Afterwards, before the justices of said Supreme Court of the United States, came said Charles A. Chapin, plaintiff in error, by N. H. Stewart and Edward Bacon, his attorneys, and says that in the record and proceedings aforesaid and also in the giving of judgment aforesaid there was manifest error, as hereinafter stated, to wit:

1. There was error in the decision of the supreme court of Michigan, the highest court of said State (said court being hereinafter designated in these assignments of error as "the court"), as follows:

The validity of section 2 of act 161 of the laws of said State for 1850 was, as aforesaid, drawn in question before said court on the ground of being repugnant to the Constitution of the United States and the decision of said court was in favor of the validity of said act.

2. There was also error in the decision of said court as follows:

The validity of an authority exercised under the State of Michigan in this suit, under section 2 of act 161 of the laws of said State for

1850, was, as aforesaid, drawn in question before said court, on
438 the ground of being repugnant to the Constitution of the United States, and the decision of said court was in favor of its validity; and reference is hereby made to the aforesaid proceedings in this case under said act, including the verdict for single damages, the adjudication that the verdict was excessive, and the final judgment for the amount thereof.

3. There was also error in the decision of the supreme court of Michigan aforesaid as follows:

The validity of section 2 of act 161 of the laws of said State for 1850 was, as aforesaid, drawn in question before said court on the ground of being repugnant to so much of amendment 7 of the Constitution of the United States as is in these words: "No fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law," and the decision of said court was in favor of the validity of said act.

4. There was also error in the decision of said court as follows: The validity of section 2 of act 161 of the laws of said State for 1850 was, as aforesaid, drawn in question before said court, on the ground of being repugnant to so much of the Constitution of the United States as assures and protects the right of trial by jury, and the decision of said court was in favor of the validity of said act.

5. There was error in the decision of said court as follows: The validity of section 2 of act 161 of the laws of said State for 1850 was, as aforesaid, drawn in question before said court, on the ground of being repugnant to so much of the Constitution of the United States as purports to declare that no person shall be deprived of life, liberty, or property without due process of law, and the decision of said court was in favor of the validity of said act.

6. The court erred in disregarding all claims on behalf of said Charles A. Chapin that section 2 of act 161 of the laws of
439 said State for 1850, drawn in question as aforesaid, was repugnant to the Constitution of the United States.

7. The court erred in disregarding all claims on behalf of Charles A. Chapin that the validity of an authority exercised under section 2 of act 161 aforesaid of the laws of said State for 1850, being drawn in question as aforesaid, was repugnant to the Constitution of the United States.

8. The court erred in disregarding all claims presented, as aforesaid, on behalf of Charles A. Chapin under the fourteenth amendment to the Constitution of the United States.

9. The court erred in disregarding all claims before said court, presented as aforesaid, under the seventh amendment to the Constitution of the United States.

10. The court erred in causing to be entered against said Charles A. Chapin the last judgment aforesaid, in manner aforesaid, regardless of all his claims before said court under the Constitution of the United States, and regardless of every one of said claims.

11. The court erred in disregarding the assignment of error aforesaid numbered 94th, the same being explained by paragraph numbered 16 in the errors relied upon, set forth in the brief on behalf

of said Charles A. Chapin, duly filed and submitted, said paragraph being as follows: "The circuit judge erred in rendering and entering judgment aforesaid, because act 161 of 1850, in material parts thereof, is in violation of the provisions of the Constitution of the United States, especially so much of article fourteen of the amendments to said Constitution as is as follows: 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law.'"

See section 18 of the reasons for motion for new trial, page 381 (of the printed record used before the Michigan supreme
440 court), and exceptions and assignments of error in relation thereto.

12. The court erred also in disregarding the assignment of error in the record numbered 95.

13. Also further in disregarding assignment of error aforesaid numbered 96.

14. The court erred in disregarding and denying paragraph 16 in the errors relied upon, set forth in the brief of said Charles A. Chapin, duly filed and submitted to said court, and in disregarding so much of said brief under head "VII," explaining said paragraph, as is in these words: "The defendant especially insists that the judgment in this case ought to be reversed, and that there can be no affirmance of the same without disregard of the provisions of the Constitution of the United States, and especially so much of article fourteen of the amendments to said Constitution as is in these words: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law.'"

15. The court erred in disregarding the truth, now here insisted upon by said Charles A. Chapin, that section 2 of act 161 of 1850, said section being set forth in the opinion aforesaid, is repugnant to the fourteenth amendment to the Constitution of the United States:

a. In that its words, "If it shall appear to the satisfaction of the court by the evidence that the defendant is justly liable for the damages complained of under the provisions of this act, the court shall render judgment against the defendant for double the amount of damages proved," stand as written in the act, and no method or procedure is provided whereby any matter is so to appear; and reference is hereby made to the aforesaid proceedings in this case under said act, including the verdict for single damages, the
441 adjudication that the verdict was excessive, and the final judgment for the amount of the verdict."

b. Also in this, that no notice to any defendant is required.

c. Also in this, that the circuit judge is authorized to proceed at will, when and how he pleases, without notice to any party.

d. Also in this, that said section purports that a verdict of a jury for single damages, as in this case, is to be without effect to fix the

amount of damages for which judgment is to be rendered, and even decide in favor of which party the judgment shall be.

e. Also in this, that the circuit judge is to determine from the evidence the amount of damages proved.

f. Also in this, that said words purport that the judge is to act as a juror.

g. Also in this, that the said words purport that the judge is to act as a chancellor in a suit at law.

h. Also in this, that said words purport that the circuit judge is to decide whether or not it satisfactorily appears that the defendant is justly liable for the damages complained of, under the provisions of this act.

i. Also in this, that no chancery appeal is given.

j. Also in this, that said words purport that the circuit judge is to re-examine and decide upon the evidence that the jury has considered and decided upon, and may decide otherwise than the jury has decided.

k. Also in this, that, as to the facts tried by the jury, said words purport that the circuit judge is to re-examine the same, otherwise than according to the rules of the common law and requirements of the law of the land.

l. Also in this, that the words aforesaid purport that after a trial, as aforesaid, and a verdict for single damages, the circuit
442 judge is to have yet another trial before himself, as happened in this case, the provisions and procedure for which are left to his invention, will, and pleasure, and purport to authorize him to proceed specially and arbitrarily, regardless of the law of the land, and that such other trial is to be a condition precedent to the final judgment.

m. Also in this, that so much of said section 2 of act 161 of the laws of Michigan for 1850, on which this suit depends, according to the declaration therein filed, is unconstitutional and inoperative: that the entire section is inoperative and void and cannot sustain the judgment finally entered in this suit.

And inasmuch as the Supreme Court of the United States may consider the entire case as it appears in the record, this assignment of errors is continued, as follows:

16. The supreme court of Michigan erred in so much of its opinion and decision aforesaid as declared section 2 of act No. 161 of 1850, therein mentioned, to be operative as it is written.

17. The court erred in deciding that section 2 of act 161 of 1850 aforesaid is operative to sustain the judgment finally entered in this suit.

18. The court erred in disregarding assignment of error No. 83.

19. The court erred in disregarding assignment of error aforesaid No. 31.

20. Also, further, in disregarding assignment of error aforesaid No. 32.

(These last two assignments of error refer to the claim of Charles A. Chapin to have the circuit judge direct a verdict in his favor.)

21. The court erred in disregarding assignments of error aforesaid No. 65.

22. Also in disregarding assignment of error No. 66.

23. Also in disregarding assignment of error aforesaid No. 67.

443 24. Also in disregarding assignment of error aforesaid No. 68.

25. Also in disregarding assignment of error aforesaid No. 69.

(Said last five assignments of error refer to the five written requests on behalf of Ruth I. Fye granted by being embodied in the charge of the circuit judge on his own motion.)

26. The court erred in disregarding assignment of error aforesaid No. 70.

27. Also, further, in disregarding assignment of error No. 71.

28. Also in disregarding assignment of error No. 72.

29. Also in disregarding assignment of error No. 73.

30. Also in disregarding assignment of error No. 74.

31. Also in disregarding assignment of error No. 75.

(Said six last-mentioned assignments of error refer to parts of the charge of the circuit judge on his own motion.)

32. The court erred in so much of the opinion and decision aforesaid as purports to adjudicate that no assignment of error on behalf of Charles A. Chapin in relation to section 2 of act 161 of 1850 ought to succeed. Reference is hereby made to subdivision I of said opinion.

33. The court erred in so much of the opinion and decision aforesaid as purports to adjudicate that Charles A. Chapin was liable in this suit, notwithstanding all that the evidence set forth in the record shows, without conflict, to have been done and permitted by the parents of Ruth I. Fye and by the servant girls mentioned in said opinion or any of said persons, as will more fully appear, reference being had to subdivision II of said opinion.

34. The court erred in so much of the opinion and decision aforesaid as in effect purports to adjudicate that no assignment of error on behalf of Charles A. Chapin in relation to the admission or exclusion of evidence on the trial ought to succeed. Reference

444 is hereby made to subdivision IV of said opinion.

35. The court erred in so much of the opinion and decision aforesaid as purports to adjudicate that the circuit judge committed no error or errors, and that no assignment of error, unless it be such as complained of excess in amount of money awarded, ought to succeed, and that not one of the first nineteen "errors relied upon," set forth in the brief on behalf of Charles A. Chapin, according to the rules of the supreme court of Michigan, ought to be deemed fatal to any judgment aforesaid in this case. Reference is hereby made to subdivision V of said opinion, and to the last lines of subdivision I thereof, which show that every one of said assignments of error was accepted as regular and denied on the merits.

36. The court erred in so much of its opinion and decision aforesaid as is in effect that section 2 of act 161 of 1850, mentioned in said opinion, authorized the circuit judge to do all that he did,

unless it be in deciding that the verdict was excessive in amount and in that which was consequent upon such excess.

37. The court erred in so much of the opinion and decision aforesaid as declares that the verdict for $10,000 was excessive, and yet orders the aforesaid final judgment for $10,000.

38. The court erred in disregarding assignment of error No. 77.

39. Also in disregarding assignment of error No. 78.

40. Also in disregarding assignment of error No. 79.

41. Also in disregarding assignment of error No. 35.

445 *38.* There is also error in this, that by the law of the land the judgment aforesaid ought to have been in favor of said Charles A. Chapin and against said Ruth I. Fye, and said Charles A. Chapin prays that the judgment aforesaid, for the errors aforesaid and other errors in the record and proceedings aforesaid, may be reversed, overruled, and altogether held for nothing, and that he may be restored to all things he has lost by occasion of the judgment aforesaid.

N. H. STEWART,
EDWARD BACON,
Attorneys for Plaintiff in Error.

446 To the Honorable Henry Billings Brown, a justice of the Supreme Court of the United States, or to any other justice of said court:

The petition of Charles A. Chapin, of the city of Chicago, county of Cook and State of Illinois, respectfully showeth:

That for more than ten years next prior to September, 1898, he was a resident of the city of Niles, in the county of Berrien and State of Michigan; that in said month he removed to said city of Chicago, and ever thereafter has continued to be a resident of said city and a citizen of the State of Illinois.

Further, that in a certain action of trespass on the case lately pending in the circuit court for the county of Kalamazoo, in the State of Michigan, in which action Ruth I. Fye, a minor under the age of twenty-one years, by Henry W. Fye, her next friend, was plaintiff and your petitioner, Charles A. Chapin, was defendant, a judgment was entered in said circuit court in favor of said plaintiff and against your petitioner for the sum of twenty thousand dollars damages and five dollars costs of suit, on or about the 11th day of June, A. D. 1898.

That your petitioner duly obtained the settlement of a bill of exceptions, and further obtained a writ of error, issued out of and under the seal of the supreme court of the State of Michigan, and thereby removed the record and proceedings in said suit into said supreme court of the State of Michigan; that said supreme court of the State of Michigan is the highest court of law or equity in said State in which a decision could be had, and that hearing and argument in said supreme court were had, and afterwards, on the 16th day of November, 1899, by the consideration of said supreme court, the judgment of said circuit court was modified and affirmed so

447 as to be for the sum of ten thousand dollars damages, and which said judgment so affirmed is final.

Further, that in said suit was drawn in question the validity of a statute of the State of Michigan, on the ground of its being repugnant to the Constitution of the United States, and the decision of said supreme court was in favor of the validity of said statute.

And your petitioner further states that hereto are to be speedily annexed and marked Exhibit "X," copies of the record and proceedings in said suit, including the opinion and judgment of said supreme court filed and entered in said suit, such copies to be duly verified by the certificate of Charles C. Hopkins, clerk of said supreme court, under the seal thereof, and your petitioner refers to said exhibit and makes the same a part of this his petition, to the end that the contents thereof may more fully and at large appear.

And your petitioner further states that he is aggrieved by the decision and judgment of said supreme court, and that he is advised and verily believes, and therefore alleges, that the statute aforesaid, to wit, section 2119 of Howell's Annotated Statutes of the State of Michigan, being section 5593, Compiled Laws of 1897, mentioned in the plaintiff's declaration in said suit, and under which said suit was brought, is repugnant to the Constitution of the United States, and especially to the 14th amendment thereof, and to so much of said Constitution as assures and protects the right of trial by jury and so much thereof as is as follows: "No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," and to all parts of said Constitution which assure to citizens rights to due process of law; and your petitioner refers to the exhibit aforesaid as to the manner and form in which was drawn in
448 question said statute and the repugnancy thereof to the Constitution of the United States.

And your petitioner further specifies the manner in which he is aggrieved by the aforesaid decision and judgment as follows:

By reference to his material claims set forth in his assignments of error and in the briefs of his counsel made and filed in said supreme court in compliance with its rules 40, 41, and 42, and respectfully insists upon all of said claims and waives none thereof.

Wherefore your petitioner prays the allowance of a writ of error in due manner and form, to be issued out of and under the seal of the Supreme Court of the United States and directed to the honorable the supreme court of the State of Michigan, to the end that under the certificate and seal of said State supreme court, distinctly and openly, may be sent the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with such writ, and that the same may be at Washington on the second Monday of October next, A. D. 1900, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct the error or errors what

of right and according to the laws and customs of the United States should be done.

And your petitioner further prays that the proper citation in due manner and form may be signed to accompany said writ of error, according to the statutes, rules, and practice in such case made and provided.

CHARLES A. CHAPIN.

N. H. STEWART,
EDWARD BACON,
Attorneys for Petitioner.

449 STATE OF MICHIGAN, } ss:
County of Berrien, }

On this 24th day of November, A. D. 1899, before me, a notary public in and for said county, personally came Charles A. Chapin, who, being by me duly sworn, made oath and said that he has read the foregoing petition by him subscribed and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information and belief, and as to those matters he believes it to be true.

[Seal of Notary Public, Niles, Berrien County, Michigan.]

BELLE CROSS,
Notary Public, Berrien Co., Mich.

450 [Endorsed:] Petition for allowance of writ of error. Allowed. H. B. Brown.

451 STATE OF MICHIGAN:

In the Supreme Court.

RUTH I. FYE, by Her Next Friend, HENRY W. FYE, Plaintiff and Appellee,
vs.
CHARLES A. CHAPIN, Defendant and Appellant.

The defendant was the owner of a large St. Bernard dog. On the 16th of December, 1897, two servant girls in defendant's employ called on the mother of plaintiff, accompanied by the dog. The dog was admitted with them into the house, and while the two callers and Mr. and Mrs. Fye engaged in conversation, the plaintiff, a child of 4 years and 4 months of age, was seated on the floor of the adjoining room, playing with her dolls. She was suddenly assaulted by the dog in a very ferocious manner, bitten on the face and on the scalp. The scalp was torn loose, resulting in a considerable loss of blood, and, it is claimed, permanent disfigurement. The plaintiff also gave testimony tending to show that extreme nervousness followed the shock and fright, and that in the following April she had spasms, which were epileptic; and also offered medical testimony tending to show that epilepsy is incurable, and that the most probable cause of the attack in April was the attack of the dog. That

extreme fright or the injury to the scalp might either result in epilepsy. The defendant's testimony tended to show that the spasms were traceable to causes entirely distinct from the injury by defendant's dog. The jury returned a verdict for $10,000, and judgment for double this amount was entered by the court. The defendant brings error, assigning error on no less than 98 rulings of the trial judge. The questions which are of sufficient importance to merit special discussion are not, however, numerous, and, while none have escaped examination, we shall pass over such as are not specially discussed with the statement that we find no error in the ruling of the learned judge in respect to them.

1. The action is based on act No. 161 of 1850, being section 5593, Comp. Laws, 1897, which reads as follows: "If any dog shall have killed or assisted in killing, wounding or worrying any sheep, lamb, swine, cattle or other domestic animal, or that shall assault or bite or otherwise injure any person while traveling in the highway, or out of the enclosure of the owner or keeper of such dog, such owner or keeper shall be liable to the owner of such property or person injured, in double the amount of damages to be sustained, to be recovered in an action of trespass or on the case; and it shall not be necessary, in order to sustain an action, to prove that the owner or keeper knew that such dog was accustomed to do such damage or mischief; and upon the trial of any cause mentioned in this section, the plaintiff and defendant may be examined under oath, touching the matter at issue, and evidence may
452 be given as in other cases; and if it shall appear to the satisfaction of the court by the evidence, that the defendant is justly liable for the damages complained of, under the provisions of this act, the court shall render judgment against such defendant for double the amount of damages proved, and costs of suit; but in no case shall the plaintiff recover more than five dollars costs." It is contended that this act is unconstitutional, in that it confers upon the circuit judge power to act as a chancellor in a suit at law in so far as he exercises the authority to double the damages. The construction which defendant's counsel gives to the statute is that, before the court shall double the damages, it must appear satisfactorily to the court that the defendant is justly liable for the damages complained of, and that the judge is, by the terms of the statute, to act independently of the jury in determining the amount of damages proved. The statute has been enforced in a number of cases. Swift *v.* Applebone, 23 Mich., 252; Elliott *v.* Herz, 29 Mich., 202; Monroe *v.* Rose, 38 Mich., 348; Trompen *v.* Verhage, 54 Mich., 305; 20 N. W., 53; Burnham *v.* Strother, 66 Mich., 519; 33 N. W., 410. The questions now suggested have not heretofore been raised by either the court or counsel. This fact does not, of course, conclude the defendant. The presumption is strong, however, that the statute, which has been operated under for nearly half a century, has on various occasions, when it has been enforced, been scrutinized by both court and counsel, and found not open to attack. The statute is inartificially drawn, but we think it open to a construction which is not inconsistent with

the proper exercise of the distinct functions which the law casts upon the judge and jury respectively. The liability is declared to be in double the damages sustained. The presumption is that those damages are to be ascertained as in ordinary cases,—if the trial be before a jury, by the jury; and by the court when the jury is dispensed with. While the latter portion of the section is more appropriate to a trial before the court without a jury, we think the word "court" may be construed to mean the court acting through all of its instrumentalities, which includes the jury, and, so construed, the act is operative. It is competent for the legislature to provide for doubling damages in this class of cases. Trompen *v.* Verhage, 54 Mich., 304, 20 N. W., 53; Cummings *v.* Riley, 52 N. H., 368; Chickering *v.* Lord (N. H.), 32 Atl., 773; Fitz Gerald *v.* Dobson, 78 Me., 559, 7 Atl., 704; Barrett *v.* Railroad Co., 3 Allen, 101.

2. The defendant asked the court to charge that, as the plaintiff's parents had the dog in their home at the time of the assault, and had knowledge of the nature of the dog, they were guilty of gross negligence directly contributory to the injury that the child received, and that for this reason the plaintiff was not entitled to recover. It is insisted in this court that the negligence of the plaintiff's parents was the proximate cause of the injury. In the same connection it is insisted that the servant girls, in taking the dog into the presence of plaintiff's parents, were disobeying instructions, and that the court was in error in refusing to charge that the reckless negligence of defendant's hired girls in disobedience of his order could not be imputed to him. We think it cannot be said that the plaintiff's parents were in any sense the keeper of this dog. The defendant was such keeper, and the injuries were inflicted outside the inclosure of defendant. He is liable, therefore, unless the negligence of plaintiff's parents or defendant's hired girls relieves him. The negligence of the parents cannot be imputed to this child. Shippy *v.* Village of Au Sable, 85 Mich., 280, 48 N. W., 584; Mullen *v.* City of Owosso, 100 Mich., 103, 58 N. W., 663. At the common law, in an ac-
453 tion against the owner of a vicious dog, if the keeper knew of the vicious character, he was liable for any damage done, without further proof of negligence on his part. The negligence was said to consist, not in the manner of keeping and confining the animal, but in keeping him at all. In some cases it is said that the owner must, at his own peril, keep him safe from doing hurt. See Kelly *v.* Tilton, 2 Abb. Dec., 495. In some cases the defendant has been held liable notwithstanding the contributory negligence of the plaintiff. Woolf *v.* Chalker, 31 Conn., 130. A better rule is, however, stated in Muller *v.* McKesson, 73 N. Y., 204, by Chief Justice Church, which is that the owner cannot be released from liability by any act of the person injured unless it can be affirmed that he caused the injury in himself with a full knowledge of its possible consequences. If this be the rule as to the negligence of the plaintiff at common law, certainly the negligence of a third person cannot be held to relieve the defendant. The effect of this statute is to extend the common law so as to include all keepers of dogs, and to

dispense with proof of the previous knowledge of their vicious character. The contention of defendant's counsel cannot be sustained.

3. Plaintiff's declaration contains two counts. In the first count, after stating the injury, it is averred: "And thereby plaintiff was greatly bruised, cut, torn, and otherwise injured, and plaintiff's whole nervous system was permanently injured by the shock and fright of said assault; and thereby the plaintiff was otherwise greatly and permanently wounded, and injured, and disfigured for life; and by means whereof plaintiff became and was sick, sore, lame, and disordered, and suffering great bodily pain and mental anguish and torture, and still continues to suffer great pain, and the character of said injuries are such that plaintiff will continue to suffer great pain and inconvenience, and the plaintiff was thereby disfigured for life." In the second count: "The plaintiff, theretofore a sound and healthy person, became and was, and now is, sick, sore, lacerated, lame, and permanently disfigured and injured, and her whole nervous system permanently injured, and her mental faculties ruined, and her health permanently injured, and her blood poisoned and contaminated." It is contended that these averments are insufficient to authorize proof of resulting epilepsy. The declaration in each count sufficiently avers permanent injuries, and evidence was offered to trace the injuries to the act complained of. The question is concluded by Johnson *v.* McKee, 27 Mich., 471; Elliott *v.* Van Buren, 33 Mich., 49; Keyser *v.* Railway Co., 66 Mich., 390, 33 N. W., 867; Montgomery *v.* Railway Co., 103 Mich., 46, 61 N. W., 543.

4. Error is assigned upon ruling of the circuit judge in admitting and excluding testimony. In some cases the testimony now complained of was received without objection, and in some cases the rulings were discretionary. It is insisted that error was committed in permitting certain hypothetical questions. The questions are too lengthy to set out at length, but we have examined them, and find the questions fairly stated the case as the plaintiff had the right to contend that it was when the questions were put. Dr. Baldwin, who was called to attend the plaintiff at the time of the injury, and also when she was suffering from spasms in the following April, testified to her condition as he found it on the latter occasion, and stated that he ascribed the attack to indigestion. Defendant's counsel insist that, as this testimony indicates a cause for the attack, and as it was not considered by the expert witnesses, the testi-
454 mony given by them should have been wholly excluded from the consideration of the jury; and a request along this line was preferred. The doctor was a witness for the defense. The plaintiff's witness had described the appearance of the plaintiff, and the testimony of the experts was based upon this description. The plaintiff had the right to have the answers stand, and to urge to the jury the claim as made out by her, particularly as there was testimony raising a question of credibility.

5. A motion for a new trial was made before the circuit judge. The same points of law were raised which we have discussed in this

opinion. In addition it was contended that the verdict was excessive The circuit judge held that, while the verdict was a large one, it wa not so large as to authorize the court in finding that it was excessive A most careful reading of the record leads us to a different con clusion. The evidence tending to show that epilepsy will resul from the injury is not, to our mind, clear and convincing, althougi legally admissible. It would appear that the jury resolved every doubt against the defendant, and it is by no means clear that they did not include in their verdict an award by way of punishment A new trial will be granted, unless the plaintiff shall, within 30 days, elect to remit from the judgment $10,000. Defendant wil recover costs of this court.

R. M. MONTGOMERY.
C. B. GRANT.
FRANK A. HOOKER.
CHAS. D. LONG.
J. B. MOORE.

(Endorsed:) Filed Nov. 14, 1899. Chas. C. Hopkins, clerk su preme court.

STATE OF MICHIGAN, *ss:*

In the Supreme Court.

CLERK'S OFFICE.

I, Charles C. Hopkins, clerk of the supreme court of the State o Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of the opinion of the court now on file in said court in said cause; that I have compared the same with the orig inal, and that it is a true transcript therefrom and the whole of said original.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at Lansing, this 11th day of Decem ber, A. D. 1899.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS, *Clerk.*

455 [Endorsed:] State of Michigan, supreme court. Ruth I. Fye, by her next friend, by Henry W. Fye, *vs.* Charles A. Chapin. Opinion. Charles C. Hopkins, clerk.

456 STATE OF MICHIGAN:

In the Circuit Court for the County of Kalamazoo.

RUTH I. FYE, by Next Friend, Plaintiff,
vs.
CHARLES A. CHAPIN, Defendant.

To Charles A. Chapin, defendant, and Edward Bacon and N. H. Stewart, his attorneys:

Please to take notice that Exhibit "A," hereto annexed, is a true copy of the plaintiff's election in said cause to remit $10,000.00

from the judgment heretofore entered in said cause, in accordance with the decision of the supreme court of the State of Michigan, filed in said cause November 14th, 1899.

And you are notified that the paper marked Exhibit "B," hereto annexed, is a true copy of the remittitur issued in said cause by the clerk of the said supreme court of the State of Michigan and filed in the office of the clerk of the circuit court for the county of Kalamazoo Nov. 18th, 1899.

The plaintiff herein demands payment of the judgment for $10,000.00, together with interest thereon, at 6 % per annum, from June 3rd, 1898.

November 21st, 1899.

GORE & HARVEY,
Attorneys for Plaintiff.

457 EXHIBIT "A."

STATE OF MICHIGAN:

Supreme Court.

RUTH L. FYE, Minor, Who Sues by Her Next Friend, HENRY FYE, Plaintiff,
vs.
CHARLES A. CHAPIN, Defendant.

Now comes the above-named plaintiff, Ruth L. Fye, by Gore & Harvey, her attorneys, and elects to remit, and does hereby remit, from the judgment entered in said cause, ten thousand dollars.

This election is made under and in pursuance of the opinion of this court filed in said cause November 14th, 1899.

November 16th, 1899.

GORE & HARVEY,
Attorneys for Plaintiff.

[Endorsed:] Supreme court. Ruth L. Fye, plaintiff, *vs.* Charles A. Chapin, defendant & appellant. Plaintiff's election. Gore & Harvey, attorneys for plaintiff.

458 EXHIBIT "A."

At a session of the supreme court of the State of *of* Michigan, held at the supreme court-room, in the capitol, in the city of Lansing, on the sixteenth day of November, in the year of our Lord one thousand eight hundred and ninety-nine.

Present: The Honorable Claudius B. Grant, chief justice; Robert M. Montgomery, Frank A. Hooker, Joseph B. Moore, Charles D. Long, associate justices.

RUTH L. FYE, Plaintiff,
vs.
CHARLES A. CHAPIN, Defendant and Appellant.

The record and proceedings in this cause having been removed to this court by writ of error issued to the circuit court for the

county of Kalamazoo, and the same and the matters in error assigned having been seen and inspected and duly considered by the court, and it appearing to this court that in said record and proceedings and in the giving of judgment in said circuit court there is error, as stated in the opinion filed herein November 14, 1899;

And the plaintiff having duly filed her election with the clerk of this court to remit from said judgment ten thousand dollars, in accordance with the opinion of this court: Now, therefore, it is ordered and adjudged that the judgment of the circuit court for the county of Kalamazoo is modified accordingly, and as so modified said judgment is hereby in all things affirmed, and that the plaintiff do recover of the defendant ten thousand dollars, with
459 interest thereon from June 3, 1898, at 6 per cent. per annum, as provided by law, and that the said plaintiff have execution therefor, and that the defendant do recover of the plaintiff his costs in this court to be taxed, and that the defendant have execution therefor.

STATE OF MICHIGAN, *ss:*

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of a decree now of record in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom and the whole of said original decree.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said supreme court, at Lansing, this 17th day of November, in the year of our Lord one thousand eight hundred and ninety-nine.

CHAS. C. HOPKINS, *Clerk.*

STATE OF MICHIGAN, }
County of Kalamazoo, } *ss:*

I, Ashley Clapp, register of the circuit court for the county of Kalamazoo, in chancery, do hereby certify that the above and foregoing is a true and correct copy of the notice of filing remittitur entered in the above-entitled cause in said court, as appears of record in my office; that I have compared the same with the original, and it is a true transcript therefrom and of the whole thereof.

In testimony whereof I have hereunto
Seal Circuit Court, Kalamazoo Co., Michigan. set my hand and affixed the seal of said court, at Kalamazoo, this 5th day of January, A. D. 1900.

ASHLEY CLAPP,
Register in Chancery.
By MINA CLAPP,
Deputy Register.

[10-cent U. S. internal-revenue stamp, canceled 1, 6, 1900. M. A. C.]

460 [Endorsed:] No. 464, docket 12. The circuit court for the county of Kalamazoo. Ruth I. Fye, by next friend, plaintiff, *vs.* Charles A. Chapin, defendant. Notice of filing remittitur. Rec'd a true copy of the within notice, election, and remittitur this 21st day of November, 1899. N. H. Stewart, by Edward Bacon, also Edward Bacon, attorneys for defendant. Received and filed this 22nd day of November, 1899. Ashley Clapp, county clerk.

Endorsed on cover: File No., 17,605. Michigan, Kalamazoo county court. Term No., 182. Charles A. Chapin, plaintiff in error, *vs.* Ruth I. Fye, by her next friend, Henry W. Fye. Filed January 12th, 1900.

No. 182.

By. of Stewart Wenchell for Def'd

Office Supreme Court U. S.
FILED
SEP 29 1900
JAMES H. MCKENNEY
Clerk

BRIEF OF PLAINTIFF IN ERROR IN OPPOSITION TO THE MOTION TO DISMISS OF DEFENDANT IN ERROR.

Filed Sept. 29, 1900.

SUPREME COURT of the UNITED STATES.

OCTOBER TERM, 1900.

No. 182.

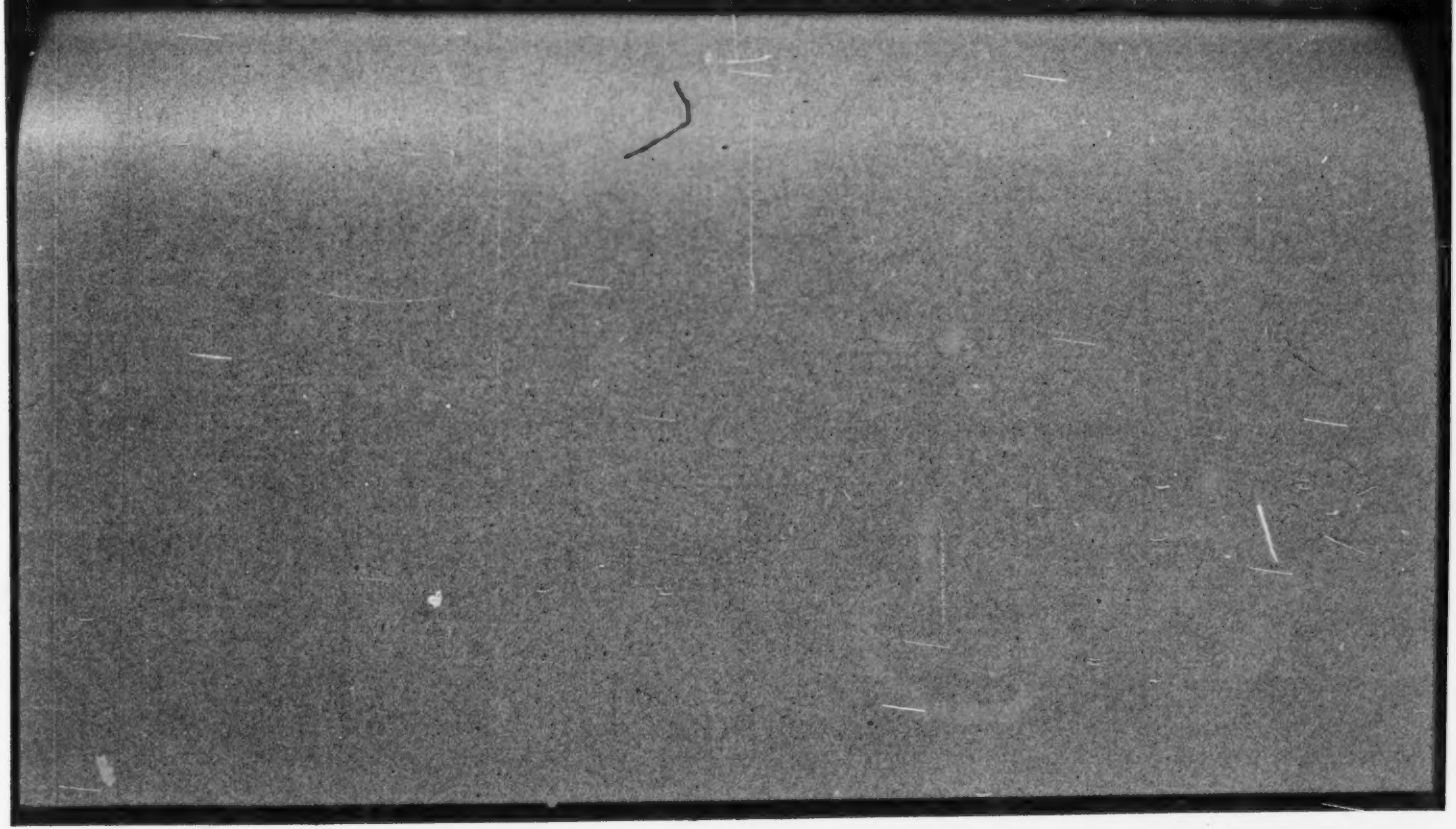
CHARLES A. CHAPIN, PLAINTIFF IN ERROR,

vs.

RUTH I. FYE, BY HER NEXT FRIEND,
HENRY W. FYE.

IN ERROR TO THE CIRCUIT COURT OF KALAMAZOO COUNTY, STATE OF MICHIGAN.

(17,605.)



SUPREME COURT of the UNITED STATES.

CHARLES A. CHAPIN,
Plaintiff in Error,
vs.
RUTH I. FYE, by her next friend, HENRY W. FYE.

October Term, 1900.
No. 182.

Brief in Behalf of the Plaintiff in Error.

STATEMENT OF THE CASE.

This action is brought under Section 2119 of Howell's Statutes of Michigan, which is as follows:

"If any dog shall have killed or assisted in killing, wounding or worrying any sheep, lamb, swine, cattle, or other domestic animal, or that shall assault or bite, or otherwise injure any person while traveling the highway or out of the enclosure of the owner or keeper of such dog, such owner or keeper shall be liable to the owner of such property or person injured in double the amount of damages sustained, to be recovered in an action of trespass, or on the case; and it shall not be necessary, in order to sustain an action, to prove that the owner or keeper knew that such dog was accustomed to do such damage or mischief; and upon the trial of

any cause mentioned in this section, the plaintiff and defendant may be examined under oath, touching the matter at issue, and evidence may be given as in other cases; and if it shall appear to the satisfaction of the court by the evidence, that the defendant is justly liable for the damages complained of under the provisions of this act, the court shall render judgment against such defendant for double the amount of damages proved, and costs of suit; but in no case shall the plaintiff recover more than five dollars costs."

The declaration alleges that defendant in error, who was a child four years of age, on the 16th day of December, 1897, was bitten by a dog, of which the plaintiff was the owner and keeper, while the dog was out of the enclosure of the plaintiff in error, by which the defendant in error was seriously and permanently injured and disfigured.

The first count in the declaration did not allege that the plaintiff had any knowledge of the previous vicious habits or conduct of the dog.

The second knowledge alleged such knowledge.

R pp. 3, 4, 5.

The case was tried before a jury. The Circuit Judge charged the jury that if the plaintiff in error was the owner and keeper of the dog, and the assault was committed without the enclosure of the plaintiff in error, the verdict should be for the plaintiff in the suit; and, on the subject of damages, charged the jury that the plaintiff in the suit was entitled to recover all damages which she had suffered up to the time of the trial, and for all damages which it is reasonably probable that she will sustain in the future, and was careful to instruct the jury that such damages included and embraced compensation for all injuries past and prospective, including indemnity for loss of physical power or mental vigor, or injury to the nervous system, or effect

of the injury complained of, including personal inconvenience, sickness, bodily and mental suffering, impairment of her capacity to make her way in the world and earn money, and the disfigurement or permanent annoyance which she was liable to be caused by the deformity resulting from the injury.

The jury were also instructed to take into account her mental suffering and fright as elements of the injury for which damages by way of compensation should be allowed.

The jury were also instructed that as these last mentioned elements of damage are, in their very nature, not susceptible of any precise or exact compensation, the determination of the amount is committed to the judgment and good sense of the jury.

The jury were instructed that they were not to assess damages against the defendant by way of punishment, but the jury were at liberty to award such an amount as would fully compensate the plaintiff for all damages she had already sustained, or would sustain, keeping in mind this fact, that compensation to plaintiff was the thing in view.

The Circuit Judge then further instructed the jury that if they found from the evidence that the dog is one of vicious and destructive propensities, and that previous to the injury to the plaintiff in the suit, he had bitten other children, and that this vicious and destructive habit, and the fact that he had bitten other children was known to the defendant in the suit, the jury were at liberty to consider these facts in fixing their award of damages, not as a punishment to the defendant, but in aggravation of the damages that the plaintiff in the suit was entitled to recover. (R. pp. 200, 201.)

The jury rendered a verdict on June 3rd, 1898, in favor of the plaintiff in the suit, for the sum of $10,000 as her damages,

R. p. 212.

On June 11th, the attorneys for the plaintiff in error filed a protest in the case against the doubling of the damages in the suit by the circuit judge. (R. p. 213.)

On the same day the circuit judge overruled the objection of the attorneys of the plaintiff in error to the doubling of the damages in the suit, and held that, under the statute, it was left to the discretion of the judge of the court to determine whether, in view of the evedence, the damages awarded by the jury in their verdict should be doubled. (R. p. 215.)

The circuit judge further held that "if in this case it had appeared that the defendant was the owner and keeper of a dog which had never shown any vicious propensities, that this was its first outbreak, while the court would be powerless to help the defendant so far as the damages assessed are concerned, the statute making him liable for those; still, if he was shown to have had no knowledge of the vicious propensities of the dog, yet it would be unjust to him to double the damages. The testimony in this case shows that this dog had been accustomed to bite mankind; and that being the case, it seems to me it presents a different case from what it would under a different state of affairs, and it became the duty of the defendant to see that the dog was shut up, without a ly peradventure, so that he would (not) get out. The jury (testimony) in question shows that the dog did get out, and whether it was with or without the fault of the defendant, after he had notice of the vicious propensities of the dog as shown in this case, he must be held to a very strict account for what the dog does." (R. p. 218.)

The Circuit Judge thereupon, on the 11th of June, 1898, entered a judgment for $20,000, doubling the amount of damages found by the verdict of the jury. (R. p. 219.)

On the 23rd of June, 1898, the attorney for the

plaintiff in error moved the Circuit Court to set aside the verdict and the judgment, and to grant a new trial, on the ground among others, that the verdict was excessive. (R. p. 221, 222.)

The case was appealed to the Supreme Court of the State upon assignments of error filed in court, among which assignments of error the invalidity of the statute was assigned by the 94th, 95th, 96th, 97th and 98th assignments, which are as follows: (R. pp. 240, 241.)

"94th. There being, also, inconsistency with the first constitution of the State of Michigan, Article 1, Sections 9, 10, 21, and there being inconsistency with the provisions of the ordinance of 1887, Article 2, said ordinance being enacted by the Congress of the United States, entitled, 'An ordinance for the government of the territory of the United States northwest of the Ohio River,' especially as to the words of said article in relation to the right of a trial by jury and judicial proceedings according to the course of common law. There being, also, inconsistency with two provisions in the Constitution of the the United States, especially the words of amendment 5, as to due process of law, and of amendment 7, assuring right of trial by jury."

"95 There is also error in this, the statute aforesaid mentioned in the declaration aforesaid, and on which the judgment aforesaid depends, is inconsistent with article 5 of the amendment to the Constitution of the United States, requiring that no person shall be deprived of life, liberty or property without due process of law."

"96th. There is also error in this that the statute aforesaid mentioned in the declaration aforesaid, and on which the judgment aforesaid depends, is inconsistent with article 7 of the amendments to the Constitution of the United States, requiring that the right of trial by jury shall be preserved."

"97th. There is also error in this, that the words of Section 2119 of Howell's Annotated Statutes of Michigan, being Section 2, Act 161, of the Laws of Michigan for 1850, on which the judgment aforesaid depends, said words being, 'If it shall appear to the satisfaction of the court by the evidence, that the defendant is justly liable for the damages complained of under the provision of this act, the court shall render judgment against such defendant for double the amount of damages proved,' purport to authorize the Circuit Judge to act as a chancellor, regardless of the verdict of a jury, and in a manner inconsistent with constitutional provisions requiring the distinction of equity proceedings from common law proceedings, and with the law of the land."

"98th. There is also error in this, that the statutory words copied in the last forgoing assignment of error, on which the judgment aforesaid depends, purports to authorize the Circuit Judge to act as a juror in a manner inconsistent with the law of the land. There is also error in this, to-wit; that the record and proceedings, it appears that the circuit court gave judgment in favor of the plaintiff and against the defendant, whereas by the law of the land, the said judgment should have been in favor of the defendant and against the plaintiff, and the said defendant therefore now alleges and asserts, and before the Supreme Court of the State of Michigan, will pray that the judgment and proceedings aforesaid, for the errors aforesaid appearing as aforesaid, may be reserved, annulled, and altogether held for naught, and that the defendant may be restored to all things which he has lost by means thereof."

The Supreme Court of the State of Michigan sustained the validity of the statute.

Upon this point the opinion of the Supreme Court is as follows: (R. pp. 259, 260.

"It is contended that this act is unconstitutional, in that it confers upon the circuit judge power to act as chancellor in a suit at law so far as he exercises the authority to double the damages. The construction which defendant's counsel gives to the statute is that, before the court shall double the damages, it must appear satisfactorily to the court that the defendant is justly liable for the damages complained of, and that the judge is, by the terms of the statute, to act independently of the jury in determining the amount of damages proved. The statute has been enforced in a number of cases. Swift v. Applebone, 23 Mich., 252; Elliot v. Herz, 29 Mich., 202; Monroe v. Rose, 38 Mich., 348; Trompen v. Verhage, 54 Mich., 305; 20 N. W., 53; Burnham v. Strother, 66 Mich., 519; 33 N. W., 410. The questions now suggested have not heretofore been raised by either the court or counsel. This fact does not, of course, conclude the defendant. The presumption is strong, however, that the statute, which has been operated under for nearly half a century, has on various occasions, when it has been enforced, been scrutinized by both court and counsel, and found not open to attack. The statute is inartificially drawn, but we think it open to the construction which is not inconsistent with the proper exercise of the distinct functions which the law casts upon the judge and jury respecttivly. The liability is declared to be in double the damages sustained. The presumption is that those damages are to be ascertained as in ordinary cases,—if the trial be before a jury, by the jury; and by the court when the jury is dispensed with. While the latter portion of the section is more appropriate to a trial before the court without a jury, we think the word "court" may be construed to mean the court acting through all of its instrumentalities, which includes the jury, and, so construed, the act is operative. It is competent for the legislature to provide for doubling damages in this class of cases. Trompen v. Ver-

hage, 54 Mich., 304, 20 N. W., 53; Cummings v. Riley, 52 N. H., 368; Chickering v. Lord (N. H.,) 32 Atl., 773; Fitzgerald v. Dobson, 78 Me., 559, 7 Alt., 704; Barrett v. Railroad Co., 3 Allen, 101."

In respect to the judgment which was rendered by the Circuit Judge, the Supreme Court sustained the Circuit Judge in the doubling of the verdict in the rendition of the judgment. But a motion for new trial having been made by the attorney of the plaintiff in error on the ground, among others, that the verdict of the jury was excessive, the Supreme Court considered the action of the Circuit Judge upon this motion, and held that the verdict of the jury was excessive, and on that ground directed that a new trial be granted, unless the plaintiff in the suit, within thirty days, should elect to remit from the judgment, $10.000.

The following is the opinion of the Supreme Court, upon this point. (R. pp. 261, 262:)

"A motion for a new trial was made before the Circuit Judge. The same points of law were raised which we have discussed in this opinion. In addition it was contended that the verdict was excessive. The circuit judge held that, while the verdict was a large one, it was not so large as to authorize the court in finding that it was excessive. A most careful reading of the record leads us to a different conclusion. The evidence tending to show that epilepsy will result from the injury is not, to our mind, clear and convicting, although legally admissible. It would appear that the jury resolved every doubt against the defendant, and it is by no means clear that they did not include in their verdict an award by way of punishment. A new trial will be granted, unless the plaintiff shall, within 30 days, elect to remit from the judgment, $10.000. Defendant will recover costs of this court."

The plaintiff in the suit, by her attorney elected to remit from the judgment the sum of $10.000 (R. p. 263.)

and thereupon judgment was rendered in the case in the Supreme Court of the state for the sum of $10.000.

The judgment as rendered in the Supreme Court is as follows: (R. pp. 263, 264.)

"RUTH I. FYE, Plaintiff,

vs.

CHAS. A. CHAPIN, Defendant and Appellant.

The record and proceedings in this cause having been removed to this court by writ of error issued to the circuit court for the county of Kalamazoo, and the same and the matters in error assigned having been seen and inspected, and duly considered by the court, and it appearing to this court that the said record and proceedings and in the giving of the judgment in said circuit court there is error, as stated in the opinion filed herein November 14, 1899.

And the plaintiff having duly filed her election with the clerk of this court to remit from said judgment ten thousand dollars, in accordance with the opinion of this court; now, therfore, it is ordered and adjudged that the judgment of the court circuit for the county of Kalamazoois modified accordingly, and as so modified said judgment is hereby in all things affirmed, and that the plaintiff do recover of the defendant ten thousand dollars, with interest thereon from June 3, 1897, at 6 per cent per annum, as provided by law, and that the said plaintiff have execution therefor, and that the defendant do recover of the plaintiff his costs in this court to be taxed, and that the defendant have execution therefor,"

II.

The question presented is this: In the proceedings by which judgment was rendered against the plaintiff in error by the *State Court*, is the plaintiff deprived of property without due process of law?

1st, Due process of law, within the meaning of the Fourteenth Amendment of the Constitution, has reference to that which is due process of law by the law of the State in which the process is applied.

Hurtado v. California, 110 U. S., 516, at 535, 536.
Missouri v. Lewis, 101 U. S., 22, at 31.

2nd, Due process of law in the State of Michigan includes the right of trial by jury in all civil cases.

Constitution of Michigan, Art. VII, Sec. 27.
" " Art. IV, Sec. 46.
McRae v. R R. Co., 93 Mich., 399.
Ball v. Ridge Copper Co,, 118 Mich,, 7, at 15, 16, 17.
Swart v. Kimball, 43 Mich., 443, at 448.
Odell v. Reynolds, 40 Mich., 21.
Tabor v Cook, 15 Mich., 322, 324, 325.
Parsons v. Russell, 11 Mich., 113, at 121, 122.

The right of trial by jury, by the law of Michigan, is the right to have the jury determine by their verdict every fact involved in the case which is necessary to authorize the judgment which is reudered in the case, and the defendant must have opportunity to be heard in his defense before the jury,

3d, The objection of the plaintiff in error to the proceedings and judgment rendered against him is, that by the action of the Circuit Judge the amount of the verdict of the jury was arbitrarily doubled in fixing the amount of the judgment, and this action of the Circuit Judge in doubling the amount of the verdict in determining the amount of the judgment was sustained by the action of the Supreme Court.

By the terms of the statute under which the action is brought, the plaintiff in error, as owner of the dog, is made liable to the defendant in error in double the amount of the damages sustained, to be recovered in an action of trespass, or on the case. This part of the statute prescribes the liability, and the extent of the liability.

The provision for rendering judgmeut is as follows:

"And if it shall appear to the satisfaction of the court by the evidence, that the defendant is justly liable for the damages complained of under the provisions of this act, the court shall render judgment against such defendant for double the amount of damages proved."

The proceedings of the trial were as follows:

The jury were impanneled to try the case, and the trial proceeded in the usual form upon introduction of evidence before the jury, and at its close the jury were charged by the Circuit Judge to determine from the evidence whether the defendant in the suit was, as owner of the dog, liable for the plaintiff's injuries.

If they found the defendant liable, they were to determine what damages she had suffered, and upon this point they were instructed to include everything that could be accounted a damage or injury, and full compensation was to be awarded her therefor.

Then, in addition to that, in case the jury should find the defendant in the suit had knowledge of the vicious and dangerous habits of the dog they were instructed that they might allow the plaintiff an additional sum as an aggravation of damages. (R. p. 200, 201.)

Acting upon this charge, the jury returned a verdict of $10,000 damages. The Circuit Judge thereupon, acting under the provision of the statute for rendering a judgment, held that it was for him as "the court," to determine whether to render a judgment upon the verdict for the amount of the verdict, or to render a judgment for twice the amount of the verdict. (R. p. 215.)

In this view of the statute it was necessary that the Circuit Judge himself determine these facts, viz: That it appear to his satisfaction by the evidence that the defendant in the suit was justly liable for the dam-

ages complained of, and the amount of the damages proved, and that such amount was the amount of the verdict rendered by the jury.

It is only upon his finding such facts that he is authorized to render a judgment for double the amount of the verdict of the jury.

The Circuit Judge by his action did so find, and rendered the judgment accordingly for $20,000 damages.

If he had not so found he would have rendered a judgment upon the verdict for the amount of the verdict.

The result of the proceedings was this: The judgment was made up of $10,000 as the result of the trial by the jury, and of an additional $10,000 as a result of the trial by the Circuit Judge.

To the extent of $10,000 the plaintiff was judged liable and required to make compensation *by trial and determination by the Circuit Judge of all the facts which would authorize a judgment for such sum.* In other words, as to all the facts which authorized a judgment for double the amount of the verdict, the case was tried and decided by the Circuit Judge as the tribunal provided by the statute to determine those facts.

In this manner the statute is interpreted by the trial judge to authorize a trial by the jury for the purpose of a verdict to determine the actual damages suffered by the plaintiff in the suit, including damages to be allowed for aggravation, and a trial by the Circuit Judge to find and determine the facts which will authorize the award of an additional sum equal to the amount awarded by the verdict of the jury.

The verdict of the jury will stand upon the finding of the jury, and judgment will be rendered for that amount, although the Circuit Judge should not be satisfied that the defendant was liable for the damages complained of, and should not be satisfied that the damages

were proved to the amount of the verdict, because, for the purpose of the verdict the jury are the judges of the facts, while for the purpose of doubling the verdict and determining the amount of the judgment, the Circuit Judge is the judge of the facts.

This proceeding does not preserve to the defendant in the suit the right of trial by jury to the extent of one-half of the amount of the judgment.

The judgment as rendered rests upon the trial and determination of the facts by the Circuit Judge.

The right of trial by jury has thus remained to the extent only of one-half the judgment.

It is to be observed that the statute is not framed to authorize, and is not interpreted by the Circuit Judge to authorize rendering judgment for double the amount of the verdict—the verdict being made the sole basis of the judgment.

Neither is the statute interpreted by the Circuit Judge to authorize the jury to determine by their verdict the sum which is double the amount of the damages proved. On the contrary, the jury are not permitted to do that. (See charge of the court, R. p. 202.)

The language of the statute as to the rendition of the judgment is that, "if it shall appear to the satisfaction *of the court* by the evidence, that the defendant is justly liable for the damages complained of under the provisions of this act, *the court* shall render judgment against such defendant for double the amount of damages proved."

The jury do not render a judgment. They render a verdict, and rendering a judgment is an entirely different and subsequent act in which the jury have no part, and the judgment is rendered *by the court.*

It is *the court*, understood in this sense, acting without the jury, which determines the amount which shall go into the judgment.

This is the interpretation given to the statute by the Circuit Judge by the decision and by the judgment of the court. (R. pp. 215, 219.)

In deciding against the protest of the defendant in the case against doubling the damages, (R. p. 213,) the Circuit Judge uses the following language (R. p. 215):

"My attention is now called by counsel for the defendant to a later clause in the statute which very decidedly modifies the former one: 'If it shall appear to the satisfaction of the court by the evidence, that the defendant is justly liable for the damages complained of, under the provisions of this act, the court shall render judgment against such defendant in double the amount of damages recovered.' I think, as contended by defendant's counsel, the words should be taken as they actually imply as provided by statute, and that it would therefore be left to the discretion of the judge of the court, whether a Justice of the Peace or a Circuit Judge, to determine whether, in view of the evidence, the damages as awarded by the jury in their verdict should be doubled. At any rate, I shall so treat it for the purposes of this motion."

Upon that decision judgment was rendered for double the amount. (R. p. 219.)

4th, The Supreme Court sustains this action of the Circuit Court.

The following is the language of the Supreme Court upon this subject (R. pp. 259, 260):

"It is contended that this act is unconstitutional, in that it confers upon the circuit judge power to act as chancellor in a suit at law so far as he exercises the authority to double the damages. The construction which defendant's counsel gives to the statute is that, before the court shall double the damages, it must appear satisfactorily to the court that the defendant is justly liable for the damages complained of, and that the judge is, by

the terms of the statute, to act independently of the jury in determining the amount of damages proved. The statute has been enforced in a number of cases. Swift v. Applebone, 23 Mich., 252; Elliot v. Herz, 29 Mich., 202; Monroe v. Rose, 38 Mich., 348; Trompen v. Verhage, 54 Mich., 305; 20 N. W., 53; Burnham v. Strother, 66 Mich., 519; 33 N. W., 410. The questions now suggested have not heretofore been raised by either the court or counsel. This fact does not, of course, conclude the defendant. The presumption is strong, however, that the statute, which has been operated under for nearly half a century, has on various occasions, when it has been enforced, been scrutinized by both court and counsel, and found not open to attack. The statute is inartificially drawn, but we think it open to the construction which is not inconsistent with the proper exercise of the distinct functions which the law casts upon the judge and jury respecttivly. The liability is declared to be in double the damages sustained. The presumption is that those damages are to be ascertained as in ordinary cases,—if the trial be before a jury, by the jury; and by the court when the jury is dispensed with. While the latter portion of the section is more appropriate to a trial before the court without a jury, we think the word "court" may be construed to mean the court acting through all of its instrumentalities, which includes the jury, and, so construed, the act is operative. It is competent for the legislature to provide for doubling damages in this class of cases. Trompen v. Verhage, 54 Mich., 304, 20 N. W., 53; Cummings v. Riley, 52 N. H., 368; Chickering v. Lord (N. H.,) 32 Atl., 773; Fitzgerald v. Dobson, 78 Me., 559, 7 Alt., 704; Barrett v. Railroad Co., 3 Allen, 101."

The cases cited by the court go to the question of the validity of the provision of the statute which *creates the liability for double* the amount of damages suffered.

Upon that point no question is made. Such a pro-

vision is valid, and there is no occasion for its discussion.

Minneopolis R. R. Co. v. Beckwith, 129 U. S., 26.
Missouri Pacific R. R. Co. v. Hume, 115 U. S., 512, 520.

The point in controversy here is, that this statute authorizes the judgment for *double* the damages suffered only on condition that *the court shall determine the facts*, and as the statute reads, and as it is interpreted and applied, the Circuit Judge is held to be *the court* for that purpose.

The further decision of the Supreme Court, determining that $10,000 be remitted from the judgment, does not remedy the action of the Circuit Judge in doubling the damages.

The Supreme Court determines that the *verdict of the jury*, of $10,000, was excessive, and remedies the action of the jury by reducing the judgment to the amount that it ought to be after doubling a proper verdict, and to accomplish that, directs $10,000 to be remitted from the judgment of $20,000.

In this manner the verdict is reduced to $5,000, and the action of the Circuit Judge in doubling that verdict is sustained.

The wrong of the action of the Circuit Judge in acting upon his own determination of the facts, and based thereon, exercising his power to double the damages proved, remains. To the extent of $5,000, the final judgment rendered, of $10,000 is based upon the determination of facts by the Circuit Judge.

5th, Upon the question whether the statute authorizes the action of the Circuit Judge, this court will accept the interpretation put upon the statute by the Supreme Court of the State.

Tullis v. Lake Erie & Western R. R. Co., 175 U. S., 348, 353.
Aberdeen Bank, v. Chehalis Co., 166 U. S., 440, 444

6th, Upon the question whether by that interpre-

tation, and the action of the court under it, the plaintiff in error is deprived of the protection of due process of law, the decision of this court is independent of the adjudication of the state court.

Scott v. McNeal, 154 U. S. 34 at 45.
Mobile & Ohio R. R. Co., v. Tennessee, 153 U. S., 486 at 492, 495.

7th, If by the action of the state court under its interpretation of the statute, the plaintiff in error is deprived of his property without due process of law, this court has jurisdiction to protect his rights by reversing the judgment of the state court, whether the statute might or might not have been otherwise properly construed and applied.

The prohibition of the Fourteenth Amendment, upon the subject of due process of law, extends to the action of the courts of the state as well as to legislative acts.

Chicago, Burlington &c. R. R. Co. v. Chicago, 166 U. S., 226 at 232.
Scott v. McNeal, 154 U. S., 34 at 45.

This court holds (Hurtado v. California, 110 U. S., 516, 535, 536,) that due process of law in the Fourteenth Amendment refers to that which is due process of law under the laws of the state—that each state may determine for itself what shall be due process of law within the state, and therefore due process of law may be different in different states.

While due process of law must in all cases include those provisions for the protection of personal rights which are prescribed by the principles of the common law, in addition to those provisions a state may make other and additional requirements for the protection of such rights, and by such additions create the due process of law by which persons are to be governed within the state.

Since it is to due process of law thus constituted

within each state to which the Fourteenth Amendment refers, it necessarily follows that under that amendment the Federal Court has jurisdiction to determine whether under the proceedings of the courts of any state, a person has been deprived of life, liberty or property without due process of law of that state.

It is not contended that this gives to the Federal Court a general jurisdiction to review the decisions of the state court in construing the statutes or constitution of the state. It is contended that the Federal Court has jurisdiction, when the question is properly presented, to inquire and determine what constitutes due process of law within the state, and determine whether by the proceedings of the state court the complaining person has been deprived of life, liberty and property without due process of law of that state.

Hodgson v. Vermont, 168 U. S., 262 at 272, 273.

III.

The claim which constitutes the Federal question which is presented to this court is sufficiently set up in the state Supreme Court.

It is held to be sufficient that the claim is made in the assignments of error to the state court.

Chicago, Burlington &c. R. R. Co. v. Chicago, 166 U. S. 226 at 271.

A motion was made to set aside the verdict and for a new trial in the Circuit Court.

The 17th ground for the motion is as follows (R. p. 223):

"17th. Section 2119, U. S. is unconstitutional for the following reasons, to wit:

"It is so written as to attempt to authorize a Circuit Judge privately to have it appear to his satisfaction that the defendant is justly liable for the damages

complained of under the provisions of Act No. 161 of 1850, and thereupon render judgment against the defendant for double the amount of damages proved, without regard to the action of any jury, and without any trial by jury as to reason for doubling any amount of damages. All in violation of the Constitution of Michigan, Article 6, Sections 1, 8, 12, 27, 32, and in violation of constitutional rights of citizens to have public trial in civil cases in courts of record."

The 78th assignment of error to the Supreme Court (R. p. 238,) is that the Circuit Court erred in its decision refusing the motion for a new trial on behalf of the defendant, notwithstanding all the reasons alleged on behalf of the defendant in support of such motion.

The same claim is made in the 93d assignment of error(R. p. 240,) which was made in the motion for new trial above stated.

The 94th assignment of error (R. p. 230,) claims that the state statute is inconsistent "with two provisions in the Constitution of the United States, especially the words of amendment 5, as to due process of law, and of amendment 7, assuring right of trial by jury."

The 95th assignment of error (R. p. 240,) claims that the statute is inconsistent with Article 5 of the amendments to the Constitution of the United States, requiring that no person shall be deprived of life, liberty or property without due process of law.

The 96th assignment of error (R. p. 240,) claims that said statute, "on which the judgment aforesaid depends, is inconsistent with Article 7 of the amendment to the Constitution of the United States, requiring that the right of trial by jury shall be preserved."

The 98th assignment of error (R. p. 240), makes the claim that by the record and proceedings the Circuit Court gave judgment against the law of the land.

While the Fourteenth Amendment of the Constitution of the United States is not specifically designated, it does sufficiently appear by the assignments of error that the plaintiff in error intended to set up the claim that under the statute and by the action of the court, he was deprived of his property without due process of law, contrary to the provisions of the Constitution of the United States.

To maintain the jurisdiction of this court it is only necessary that it should appear from the record, by the assignments of error in the state court that the claim was set up that by the proceedings complained of he is deprived of property without due process of law contrary to the provisions of the Constitution of the United States, in such terms as will inform the court that such claim is made.

While reference is made in the assignments of error to the 5th and 7th amendments, it is clear that it was the intention of the assignments of error to assert the protection which is given to him by due process of law under such provisions of the Constitution of the United States as provide for such protection. No set form of words is required to be used in making the claim in order to give this court jurisdiction to consider the claim.

California Bank v. Kennedy, 167 U. S., 362, at 365, 366.
Chapman v. Goodnow, 123 U. S., 540, at 548.
Capitol Bank v. Cadiz Bank, 172 U. S., 426 at 430.
The Victory, 6 Wall, 382 at 384.
Bridge Proprietors v. Hoboken Co., 1 Wall, 116 at 142.
Furman v. Nichol, 8 Wall, 44 at 56.
Roby v. Colehour, 146 U. S., 153 at 159, 160.

The action in the state court was a decision adverse to this claim, as the judgment of the court which was rendered in the case could not have been given without deciding it.

Harrison v. Morton, 171 U. S., 38 at 47.
Pierce v. Somerset Railway, 171 U. S., 641.
Chapman vs. Goodnow, 123 U. S., 540 at 548.
Furman v. Nichol, 8 Wall, 44 at 56.
Roby v. Colehour, 146 U. S., 153 at 159, 160.

With all due respect to counsel on the other side, an inspection of his brief upon the motion to dismiss the writ of error in this case, shows that he has misunderstood the decisions of this court as to where and how a Federal question may be raised. There is no pretence that the pleadings,—the declaration and plea filed in this case in the trial court, raise the Federal question. In the motion for a new trial, in the Circuit Court for the county of Kalamazoo, and in the assignments of error to the Supreme Court of the State of Michigan, which is the court of last resort in that state, the Federal question as we have herein before specifically and positively shown was raised.

An inspection of the cases cited by counsel in his brief, upon the subject of Federal Question, will show that, in every instance, the facts and conditions were different than they are here, and that only by inference was the claim which constitutes the Federal question set up in those cases in the court of last resort in their respective states. While in this case, as we have conclusively shown, the claim was set up and the court cited to the assignments of error specifically.

We think this an extreme case, a case where a man has been unduly and unjustly held up and made to deliver a sum of money far beyond any injury sustained by the defendant in error, and been deprived of property without due process of law, and that that question was duly raised in time, was argued and submitted to the state court, the rights of the plaintiff in error there denied upon that proposition, and that the question is fairly and properly here.

N. H. STEWART,
Attorney.

BENTON HANCHETT,
Counsel for Plaintiff in Error.

Office Supreme Court U.S.
FILED
AUG 31 1900
JAMES H. McKENNEY,
Clerk.

No. 182.

Brf. of Gore for D. C. Con mo

MOTION TO DISMISS AND BRIEF FOR DEFENDANT IN ERROR.

Filed Aug. 31, 1900.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 182.

CHARLES A. CHAPIN, PLAINTIFF IN ERROR,

vs.

RUTH I. FYE, BY HER NEXT FRIEND, HENRY W. FYE.

IN ERROR TO THE CIRCUIT COURT OF KALAMAZOO COUNTY, STATE OF MICHIGAN.

(17,605)

2120

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 182.

CHARLES A. CHAPIN,
Plaintiff in Error,
vs.
RUTH I. FYE, by Her Next Friend,
HENRY W. FYE,
Defendant in Error.

Now comes the above named defendant in error, Ruth I. Fye, by her counsel, Victor M. Gore, and moves the court now here that the writ of error in the above entitled cause be dismissed.

VICTOR M. GORE,
Counsel for Defendant in Error.

STATEMENT.

The writ of error in this cause seeks to review a judgment of the Circuit Court of Kalamazoo County, State of Michigan. On January 20th, 1898, the defendant in error brought an action of trespass on the case in the state court against Charles A. Chapin, plaintiff in error, to recover damages on account of personal injuries sustained by Ruth I. Fye, from an assault by a

dog, owned and kept by said Charles A. Chapin. The action was based upon a statute of the State of Michigan, passed and approved March 28th, 1850, Act No. 161, Public Acts of Michigan, 1850, same being Section 2119, Howell's Annotated Statutes of the State of Michigan.

The action was predicated upon Section 2 of said Act, which section is in the following language, to-wit:

"If any dog shall have killed or assisted in killing, wounding or worrying, any sheep, lamb, swine, cattle, or other domestic animal, or that shall assault or bite, or otherwise injure any person while traveling the highway, or out of the enclosure of the owner or keeper of such dog, such owner or keeper shall be liable to the owner of such property or person injured in double the amount of damages sustained, to be recovered in an action of trespass, or on the case, and it shall not be necessary, in order to sustain an action, to prove that the owner or keeper knew that such dog was accustomed to do such damage or mischief; and upon the trial of any cause mentioned in this section, the plaintiff and defendant may be examined under oath, touching the matter at issue, and evidence may be given as in other cases; and if it shall appear to the satisfaction of the court by the evidence, that the defendant is justly liable for the damages complained of under the provisions of this act, the court shall render judgment against such defendant for double the amount of damages proved and costs of suit; but in no case shall the plaintiff recover more than five dollars costs."

The declaration expressly counts upon the statute, and asks to have the plaintiff's damages doubled by virtue thereof. The defendant below, to such declaration, filed a plea of the general issue. The case was tried before Hon. George M. Buck, Circuit Judge of Kalamazoo county, and a jury, resulting in a verdict of $10,000 in favor of the plaintiff below.

Her counsel moved the Court, under the statute, to enter judgment for double the amount of the verdict, "the damages proved," which motion was granted. Judgment was entered in that court in favor of the plaintiff below for $20,000. Thereupon the plaintiff in error here filed a plea, protesting against the doubling of the damages. These objections were overruled. A motion for a new trial was entered by defendant below, alleging numerous errors in the rulings of the trial judge. This motion was overruled.

This record contains no objection to plaintiff's declaration, or to the introduction of testimony, or to any ruling of the trial court upon any proposition whatever based upon the ground that such action, or the statute upon which it is based, in any manner conflicts with the United States constitution, or any portion thereof. In other words, it does not appear that the constitution of the United States, or any law or treaty thereof, is even mentioned in the record.

The defendant below, upon suing out a writ of error to the Supreme Court of Michigan, assigned as error that the statute was inconsistent with the fifth and seventh amendments to the United States constitution (Assignments, 94, 95, 96; R., 240), but no error was predicated upon inconsistency with the fourteenth amendment, or any portion of the United States constitution, except the fifth and seventh amendments, or any treaty or statute of the United States. These assignments of error were made after judgment in the trial court, and consequently that court never had an opportunity to rule upon the questions presented by such assignments.

The cause was decided by the Supreme Court of Michigan, November 14th, 1899, and the judgment of the trial court was modified and affirmed. The Supreme Court found no error in the rulings of the trial court, but deemed the judgment of $20,000 excessive, and ordered a new trial unless the plaintiff should within

thirty days remit from the judgment $10,000. On November 16th, 1899, the plaintiff filed her election to remit from the judgment $10,000; and on said day the judgment as modified was in all things affirmed, and it was ordered and adjudged that the plaintiff recover of the defendant $10,000.

On November 22d, 1899, the election of plaintiff and the remittitur to the Circuit Court were duly filed in the office of the clerk of the Circuit Court for the County of Kalamazoo.

And such judgment is before this court for review upon a writ of error sued out by the defendant below.

The object of this motion is the dismissal of said writ of error, and said motion is based upon the following grounds:

1. The Court is without jurisdiction.

2. There is no federal question in the record.

3. No constitutional provision, treaty or law of the United States is raised in the record, nor is there any decision therein upon any such question.

4. The decision of the Supreme Court of Michigan places a construction upon the statutes and constitution of the State of Michigan, and not upon the constitution or any treaty or law of the United States.

5. Even though the record contained the federal question attempted to be raised by counsel for plaintiff in error, this motion should be granted, because the decisions of the Supreme Court of Michigan have placed such a construction upon the statute in question as to avoid any conflict between the statute and the United States constitution.

6. The decision of the Supreme Court of Michigan is in harmony with its own judgments enforcing that statute during the fifty years of its existence.

7. The assignments of error sought to be reviewed relate to alleged "inconsistencies" between the Michigan statute and the fifth and seventh amendments to the United States constitution. And such assignments of error this court will not review, for the reason that those amendments do not apply to the states.

Under Section 5 of Rule 6, defendant in error, by her said counsel, further moves the court to affirm said judgment.

This motion is based upon the ground that the question on which jurisdiction depends is so frivolous as not to need further argument.

VICTOR M. GORE,
Counsel for Defendant in Error.

UNITED STATES OF AMERICA.

IN THE SUPREME COURT.

CHARLES A. CHAPIN,
Plaintiff in Error,
vs.
RUTH I. FYE, by Her Next Friend,
HENRY W. FYE,
Defendant in Error.

Brief of counsel for defendant in error in support of motion to dismiss the writ of error herein.

I.

There is no federal question in the record and for that reason the writ of error must be dismissed.

Crowell vs. Randall, Shoemaker vs. Randall, 10 *Pet.* 368.

Santa Cruz Co. vs. Santa Cruz R. R., 111 *U. S.* 361.

Quimby vs. Boyd, 128 *U. S.* 488.

Davidson vs. Connelly, 154 *U. S.* 589.

II.

It is not sufficient to show that the federal question might have occurred, or such a decision might have been made in the trial court. This court has repeatedly ruled that such questions must appear affirmatively upon the record, and that such rulings were made.

McKinney et als. vs. Carroll, 12 *Pet.* 66.

Phelps vs. Moyer, 16 *How.* 160.

Detroit City Ry. Co. vs. Guthard, 114 *U. S.* 133.

New Orleans Water Works Co. vs. Louisana Sugar Refining Co. 125 *U. S.* 18.

III.

At the trial no title, right, privilege or immunity was set up or claimed under the constitution, laws or treaties of the United States, and therefore no such claim can be reviewed here.

Endowment Association vs. State of Kansas, 120 *U. S.* 103.
Ex. Parte Spies, 123 *U. S.* 131.
Brooks vs. Missouri, 124 *U. S.* 394.
Gray vs. Coon, 154 *U. S.* 589.

IV.

The objections based upon "inconsistency" with the fifth and seventh amendments of the United States constitution can not be sustained for two reasons.

1. Because such objection was not made before judgment was entered.

2. Because the fifth and seventh amendments impose no restrictions upon the states.

Barron vs. Mayor, 7 *Pet.* 243.
Livingston vs. Moore, 7 *Pet.* 551.
Twitchell vs. Penn. 7 *Wallace* 321.
Withers vs. Buckley, 61 *U. S.* 84.
Ex. Parte Spies, 123 *U. S.* 131, *and cases cited.*
McElvaine vs. Branch, 142 *U. S.* 158.

V.

The particular provision of the constitution relied upon must be pointed out to the state court, as well as the right claimed under it, and must have received the consideration of the state court.

Farney vs. Towle, 66 *U. S.* 350.
The Victory vs. Boylan, 73 *U. S.* 382.

VI.

The jurisdiction of this court extends only to a review of the judgment as it stands in the record.

Boom Co. vs. Boom Co., 110 *U. S.* 57.
Brown vs. Colorado, 106 *U. S.* 97.

The proceedings in the case at bar show that there was not even an attempt to raise a federal question until after judgment.

VII.

The only mention of the *fourteenth amendment* in the proceedings is found in the brief of counsel for defendant below, and this vague reference is quoted in assignment of errors No. 14. (Record, 253). But jurisdiction can not be conferred upon this court by any claim "in brief of counsel."

Worthy vs. Barrett, 76 *U. S.* 611.

VIII.

"It does not appear, either by express averment, or by necessary intendment, from any matter stated in the case, nor does any entry on the record of the cause show that any of the questions of which this court is entitled to take cognizance, under the terms of the 25th section of the Judiciary Act, arose in the cause, and were actually decided by that (the state) court." Christ Church vs. Philadelphia County, 20 How. 26. Clark vs. Penn. 128 U. S. 395. Powell vs. Supervisors, 150 U. S. 433.

IX.

To give this court jurisdiction it is imperative that a federal question "be specifically set up, or claimed," in the state court, at the proper time, in the proper way, and that the decision of such court was against the right thus set up or claimed.

U. S. Revised Statutes, Sec. 709.
Brooks vs. Missouri, 124 *U. S.* 394.
Texas & Pacific Ry. vs. Southern Pacific Ry. 137 *U. S.* 48.
Luper vs. Texas, 139 *U. S.* 462.

Sayward vs. Denny, 158 *U. S.* 180.
Ansbro vs. United States, 159 *U. S.* 695.
Chicago N. W. Ry. Co. vs. Chicago, 164 *U. S.* 454.
Clark vs. McDade, 165 *U. S.* 168.
Oxley Stave Co. vs. Butler County, 166 *U. S.* 648.
Louisville, etc. Ry. Co. vs. City of Louisville, 166 *U. S.* 709.
Levy vs. San Francisco, 167 *U. S.* 454.

ARGUMENT.

The judgment of the trial court had been rendered and entered before any objections based upon "inconsistencies" with the federal constitution were made. Even in counsel's motion for a new trial, wherein it is claimed that the statute in question is in violation of certain provisions of the constitution of the State of Michigan, there is no claim that the statute in any way contravenes any provision of the constitution or any law of the United States. Thus it appears that no federal question was in any way controverted in the trial court; nor did that court have an opportunity to pass upon such question ~~ever~~ before or after judgment.

And, furthermore, in the assignments of error (R. 230–241), submitted to the Supreme Court of Michigan, the only questions relating to the United States constitution, sought to be raised, are found in assignments Nos. 94, 95 and 96, (R. 240). And these are based upon the fifth and seventh amendments to the constitution, which, by repeated rulings of this court, do not apply to the states. So that no federal question was presented either to the trial court or the appellate court.

The conclusion is inevitable that the matter of a federal question, in this case, was an after-thought, as the first attempt to raise such question is found in brief of counsel.

The statute upon which this action is based has been in force for fifty years, and actions like the one at bar have been frequently before the Supreme Court of Michigan, the highest court of that state, for review. It has been reviewed and enforced by that court in the following cases :

Swift vs. Applebone, 23 *Mich.*, 251.
Elliott vs. Herz, 29 *Mich.*, 202.
Monroe vs. Rose, 38 *Mich.*, 348.
Thompson vs. Verhage, 54 *Mich.*, 305.
Burnham vs. Strother, 66 *Mich.*, 519.
Fye vs. Chapin, Record, pp. 258–262.

As no federal question is formally presented by the record, this court would not take jurisdiction of this case, unless the decision of such question was necessarily involved in the judgment rendered by the state court.

We submit that the decision of the state court involved the construction of a state statute, and nothing more. This being so, this court will not inquire into the correctness of that decision.

Lawler et. als. vs. Walker et. als., 14 *How.*, 149.
Robertson vs. Coulter, 16 *How.*, 106.
Baltimore Co. vs. Baltimore Ry., 151 *U. S.*, 137.

Under the statute in question, as construed by the Supreme Court of Michigan, the plaintiff in error has every right guaranteed to him by the constitution and laws of the United States; and that construction is binding upon this court.

Baltimore Traction Co. vs. Baltimore Belt Ry. Co., 151 *U. S.*, 137.

We submit that this court is without jurisdiction of this cause, and that the motion of defendant in error should be granted, and the cause dismissed.

VICTOR M. GORE,
Counsel for Defendant in Error.

Supreme Court of the United States.

No. 182.—October Term, 1900.

Charles A. Chapin, Plaintiff in Error,
vs.
Ruth I. Fye, by her next friend, Henry W. Fye.

In error to the Circuit Court of Kalamazoo County, State of Michigan.

[November 19, 1900.]

Mr. Chief Justice Fuller delivered the opinion of the Court:

This was an action of trespass on the case to recover for personal injuries inflicted on Ruth I. Fye by a dog owned and kept by Chapin; and was based on a statute of the State of Michigan, approved March 28, 1850, which provided that the owner or keeper of any dog injuring any person as set forth should be liable to the person injured "in double the amount of damages sustained, to be recovered in an action of trespass, or on the case;" and also that "if it shall appear to the satisfaction of the court by the evidence, that the defendant is justly liable for the damages complained of under the provisions of this act, the court shall render judgment against such defendant for double the amount of damages proved and costs of suit."

The declaration counted on the statute, and asked to have plaintiff's damages doubled by virtue thereof; and the trial having resulted in a verdict of $10,000 in plaintiff's favor, the Circuit Court, on motion of her counsel, entered judgment for double the amount, namely, $20,000. Defendant moved for a new trial, and assigned among various grounds therefor that the statute in question was unconstitutional because in violation of the constitution of Michigan, and "in violation of the constitutional rights of citizens to have public trial in civil cases in courts of record." The motion for new trial was denied, and defendant filed twenty-two exceptions, the eighteenth and nineteenth of which were that the statute was in violation of the Fifth and Seventh Amendments to the Constitution of the United States. The case was then carried to the Supreme Court of the State and ninety-eight errors were assigned, the ninety-fourth, ninety-

fifth and ninety-sixth being to the effect that the statute was inconsistent with the ordinance of 1787 for the government of the Northwest Territory, and with the Fifth and Sixth Amendments, securing due process of law and the right of trial by jury.

The Supreme Court required plaintiff to remit $10,000, and, this being done, affirmed the judgment, as so modified, for $10,000.

As to the contention that the act was unconstitutional, "in that it confers upon the Circuit Judge power to act as a chancellor in a suit at law in so far as he exercises the authority to double the damages," the Supreme Court, without referring to the Federal Constitution, held that it was competent for the legislature to provide for doubling damages in this class of cases, and that the latter portion of the section should be construed to mean that the court, acting through all of its instrumentalities, which included the jury, should ascertain the damages as in ordinary cases, and that as so construed the act was valid. 80 N. W. 797.

This writ of error was then allowed and errors assigned in this court, embracing alleged errors committed by the Supreme Court in disregarding certain paragraphs of the brief of counsel in that court which, it was said, asserted the statute to be in contravention of the Fourteenth Amendment. Motions to dismiss or affirm were submitted.

The validity of the provision creating the liability for double damages is not denied, but the contention seems to be that the statute authorizes the trial judge to determine independently "the amount of the damages proved," and is therefore unconstitutional. But this need not be discussed, as we think the writ must be dismissed for want of jurisdiction. If a party to an action in a State court intends to invoke for the protection of his rights the Constitution of the United States, or some treaty, statute, commission or authority of the United States, he must so declare. In this case plaintiff, after judgment, excepted to the denial of his motion for a new trial on the ground, among others, that the statute in question was in violation of the Fifth and Seventh Amendments to the Constitution, and repeated that contention in the assignment of errors in the Supreme Court, adding also that the statute was inconsistent with the ordinance of 1787. But the ordinance of 1787 was superseded by the adoption of the Constitution of the United States, and of the State, and the Fifth and Seventh Amendments were intended to operate solely on the Federal government and contain no restrictions on the powers of the State. The only reference to the Fourteenth Amendment is in the assignment of errors in this court, where it is stated that the State Supreme Court disregarded certain portions of counsel's brief alleged to have treated of that subject. This did not meet the requirements of section 709 of the Revised Statutes. *Zadig*

v. *Baldwin*, 166 U. S. 485; *Miller* v. *Railroad Company*, 168 U. S. 131; *Dewey* v. *Desmoines*, 173 U. S. 198; *Keokuk* v. *Hamilton Bridge Company*, 175 U. S. 633.

Writ of error dismissed.

Mr. Justice BROWN dissenting.

It appears in this case that defendant intended to claim the benefit of the "due process of law" clause of the Fourteenth Amendment, but inadvertently pitched his claim upon the Fifth Amendment, which also contains a similar clause, but is only applicable to proceedings in the Federal courts. The mistake is so obvious I think the court should have disregarded it, and passed upon the merits.

True copy.

Test:

Clerk Supreme Court, U. S.